

## U.S. COMMISSION ON CIVIL RIGHTS

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## MEETING

+ + + + +

FRIDAY,  
JUNE 17, 2005

+ + + + +

The Commission convened in Room 540 at 624  
Ninth Street, N.W., Washington, D.C., at 9:30 a.m.,  
Gerald A. Reynolds, Chairperson, presiding.

**PRESENT:**

GERALD A. REYNOLDS, Chairperson  
ABIGAIL THERNSTROM, Vice Chairperson  
JENNIFER C. BRACERAS, Commissioner  
PETER N. KIRSANOW, Commissioner  
ASHLEY L. TAYLOR, JR., Commissioner  
MICHAEL YAKI, Commissioner

KENNETH L. MARCUS, Staff Director

**STAFF PRESENT:**

JOHN BLAKELEY  
TERESA BROOKS  
THOMAS BURRELL, Intern  
CHRISTOPHER BYRNES  
MARGARET BUTLER  
DEBRA CARR, ESQ., Associate Deputy Staff Director

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**STAFF PRESENT (Continued):**

RUSSELL CHRISTIAN, Intern

IVY DAVIS, Director ERO/Acting Chief, Regional  
Programs Coordination Unit

CARMEN DAUGHERTY, Intern

TERRI DICKERSON, Assistant Staff Director

BARBARA FONTANA

LATRICE FOSHEE

DORELLE GRAY

GEORGE M. HARBISON, Director, Human Resources  
Division/Acting Chief, Budget and Finance  
Division

SETH JAFFE

TINALOUISE MARTIN, Director for Management, Office  
of Management

EMMA MONROIG, Solicitor/Parliamentarian

JENNY PARK

EILEEN RUDERT

AONGHAS ST. HILAIRE

VANESSA WILLIAMSON

MICHELLE WOOLLEY, Intern

AUDREY WRIGHT

MIREILLE ZIESENISS

**COMMISSIONER ASSISTANTS PRESENT:**

CHRISTOPHER JENNINGS

LISA NEUDER

KIMBERLY SCHULD

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P-R-O-C-E-E-D-I-N-G-S

(9:31 a.m.)

**Approval of Agenda**

CHAIRMAN REYNOLDS: At this point, we'll get started. Okay. The first item on the agenda is the approval of the agenda. May I have a motion to approve the agenda?

VICE CHAIRMAN THERNSTROM: So moved.

CHAIRMAN REYNOLDS: May I have a second.

COMMISSIONER YAKI: Second.

CHAIRMAN REYNOLDS: All in favor say aye.

(Vote taken.)

**Approval of Minutes of May 13, 2005 Meeting**

CHAIRMAN REYNOLDS: All in opposition. The motion carries. The second item on the agenda is the approval of the minutes for the May 13<sup>th</sup> meeting. May I have a motion?

COMMISSIONER BRACERAS: So moved.

CHAIRMAN REYNOLDS: A second.

COMMISSIONER YAKI: Second.

CHAIRMAN REYNOLDS: Any discussion? Let's vote. All in favor, please say aye.

(Vote taken.)

CHAIRMAN REYNOLDS: All in opposition. Okay. The motion carries.

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## Announcements

Now we're up to the announcements. I'm saddened to announce the passing of Dr. Murray Friedman, a former Vice Chairman of this Commission serving from 1986-1989. Dr. Friedman was appointed Vice Chairman of the Commission by President Ronald Regan, after establishing a long and accomplished career in Civil Rights. Among other accomplishments, Dr. Friedman was the Director of the Mid-Atlantic Chapter of the American Jewish Committee from 1959-2002, as well as being Regional Director of the Anti-Defamation League of B'nai B'rith in Richmond, Virginia from 1954 until 1959.

After his time at the Commission, Dr. Friedman went on to create and direct Temple University's Feinstein Center for American Jewish History. Murray Friedman was a Civil Rights Activist, prominent Jewish leader, author, historian. He will be sorely missed.

Also, I am pleased to announce that June 19<sup>th</sup>, this Sunday, marks the 140<sup>th</sup> anniversary of "Juneteenth", the oldest nationally celebrated commemoration of the ending of slavery in the United States. On June 19<sup>th</sup>, 1865, a Union General, Gordon

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1 Granger, rode into Galveston, Texas to inform its  
2 residents of the Civil War's end, which occurred two  
3 months earlier. Two and a half years after Abraham  
4 Lincoln signed the Emancipation Proclamation,  
5 Granger's General Order Number Three finally freed the  
6 last 250,000 slaves.

7 As we celebrate the end of slavery, we  
8 also take this time to recognize the many  
9 contributions of African Americans to our culture.  
10 African Americans have contributed to the vitality,  
11 success, and prosperity of our nation. Today,  
12 "Juneteenth" is a day that not only celebrates the end  
13 of bondage, but also emphasizes the accomplishments of  
14 African Americans made possible by the elimination of  
15 the greatest barrier to these achievements, which was  
16 slavery.

17 Okay. This past Monday, on June 13<sup>th</sup>, the  
18 United States Senate passed a resolution expressing  
19 its regrets to the relatives, as well as to the nearly  
20 5,000 Americans who were documented as having been  
21 lynched by vigilante mobs from 1882 to 1968. Almost  
22 3,500 of the nearly 5,000 people murdered were black  
23 Americans. Although the resolution was late, it is a  
24 welcome gesture to help heal the wounds caused by such  
25 a great injustice.

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1                   And at this point I would like to announce  
2                   some of our -- well, all of our summer interns. Is  
3                   Russell Christian here? Okay. Well, on June 6<sup>th</sup>,  
4                   Russell Christian began an internship in the Office of  
5                   the Staff Director. Russell is a second-year law  
6                   student at Ave Maria School of Law in Ann Arbor,  
7                   Michigan. He graduated from Catholic University in  
8                   2002. Russell worked for two years as a freelance  
9                   journalist, and as a fourth grade Social Studies  
10                  teacher before entering law school.

11                 Thomas Burrell, time served, welcome. Mr.  
12                 Burrell started on June 9<sup>th</sup>. He began his internship  
13                 in the Office of the Staff Director. Thomas is a  
14                 third-year law student at American University. Thomas  
15                 was recently an intern at the Department of Justice in  
16                 the Environmental Division. Welcome.

17                 Carmen Daugherty, welcome. On May 23<sup>rd</sup>,  
18                 Carmen began her internship in the Office of General  
19                 Counsel. Carmen is a third-year law student at Tulane  
20                 University. She is a former intern at the United  
21                 States Department of Education, the Office for Civil  
22                 Rights in Boston, Massachusetts, so you worked with  
23                 Tom, one of our strong offices there at the Department  
24                 of Education. Carmen also has volunteered for two  
25                 semesters to mentor and tutor at-risk second grade

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1 students at an elementary school in New Orleans.

2 And Michelle Woolley, welcome. On May  
3 31<sup>st</sup>, Michelle began her internship with the Office of  
4 General Counsel. Michelle is a second-year student at  
5 American University. She is a former Policy Assistant  
6 at the Leadership Conference on Civil Rights, as well  
7 as being a former intern with the American Association  
8 of the University of Women. We have a great crop of  
9 interns, once again, welcome.

10 Russell, I understand that Russell just  
11 walked into the room. Russell, welcome aboard.

12 COMMISSIONER YAKI: Isn't it the guy who  
13 comes in late brings the donuts?

14 VICE CHAIRMAN THERNSTROM: And the coffee.

15 CHAIRMAN REYNOLDS: Okay. I don't have  
16 any additional announcements. Chairman, do you have  
17 any additional announcements that you'd like to make?

18 VICE CHAIRMAN THERNSTROM: No, I'm sorry.  
19 I didn't mean to interrupt.

20 COMMISSIONER YAKI: Share the notes with  
21 the rest of the class.

22 CHAIRMAN REYNOLDS: No, we better rip that  
23 one up. At this point, we'll hear from the Staff  
24 Director.

25 **Staff Director's Report**

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1                   STAFF DIRECTOR MARCUS:    Thank you.    Mr.  
2   Chairman, Madam Vice Chairman, Commissioners, if it  
3   please the Commission, I'd like to extend my written  
4   report with some additional remarks regarding GAO  
5   implementation and related agency reforms, Human  
6   Capital reforms, and Anti-Deficiency issues.

7                   As the Commissioners know, we have been  
8   working very diligently to implement GAO and OPM  
9   reforms during a nine month period to end  
10   approximately the middle of January, 2006. Many of  
11   the recommendations have already been implemented, but  
12   there is quite a series of challenges coming up.

13                  We issued our 60-day follow-up report to  
14   Congress and OMB on June 6<sup>th</sup>, 2005, providing  
15   essentially a blueprint of the way in which we intend  
16   to respond to the October, 2004 and April, 2005  
17   report. Our response to the April, 2005 report was as  
18   far as we can tell, the first time that we have  
19   appropriately and timely responded to a GAO report of  
20   this kind.

21                  One of the criticisms that we had received  
22   from GAO is that we have not been responding to their  
23   reports in the manner required by law, so at a  
24   minimum, simply by providing this blueprint, we  
25   responded to one of their criticisms, but we have also

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1 set forth a fairly extensive program for reforming  
2 management and operations program planning, strategic  
3 planning, and related matters.

4 We now have staff level working groups  
5 specifically working on issues such as strategic  
6 planning and financial reform in order to develop  
7 implementation strategies for the various reforms.  
8 Along those lines, with the efforts of the Associate  
9 Deputy Staff Director, we have distributed to  
10 management a chart showing significant Commission  
11 reporting requirements in order to ensure that we are  
12 timely providing the reports required to other  
13 agencies. As has been noted by GAO and others in the  
14 past, the agency failed to provide a large number of  
15 reports that are required.

16 By way of example, earlier this month we  
17 submitted the Federal Information Security Management  
18 Act Report regarding information technology security,  
19 and to the best of our knowledge that had not been  
20 provided in the past, but is required by law, and  
21 we're making sure that we are providing the reporting  
22 that is required.

23 We have also been working on procurement  
24 issues of various sorts to try to implement the agency  
25 reforms. The Commission voted a few months ago, for

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1 instance, to have a full audit of the Commission's  
2 finances for fiscal year 2004. If we feasibly could  
3 do so in light of our finances, we are putting  
4 together a statement of worth for audit for 2004 and  
5 2005.

6 In addition, our Office of Management has  
7 updated and verified object class codes to ensure  
8 accuracy of financial reporting. This is a matter  
9 that was raised in April, 2005 and October, 2004  
10 reports, and we now believe we have strengthened our  
11 ability to ensure that budget matters are accurately  
12 inputted.

13 In addition, the Administrative Services  
14 Division has cleared up Federal Procurement Data  
15 Center fiscal year 2003 data input backlog, and  
16 completed more than 70 percent of the fiscal year 2004  
17 backlog as of the end of May, 2005. This is in  
18 response to an additional criticism from the GAO's  
19 April, 2005 report. Our ability to continue with this  
20 is going to be a little bit more difficult by some of  
21 the recent attrition. One of the key people  
22 responsible for helping to deal with that particular  
23 GAO criticism is no longer on the staff, but we have  
24 been making significant progress on that matter in May  
25 and early June.

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1           In addition, we are working on Human  
2 Capital reform efforts that coincide with criticisms  
3 that we received from the OPM report because, after  
4 all, implementing the GAO October, 2004 report  
5 requires that we also implement the recommendations  
6 from OPM that are referenced in the GAO October, 2004  
7 report.

8           We understand that the Office of Personnel  
9 Management is tentatively planning to conduct another  
10 Human Capital oversight review of the Commission in  
11 September of this year. Fortunately, we have already  
12 been working to ensure that we have our Human Capital  
13 house in order by that time. As you may recall, we  
14 have a detailee from the Office of Personnel  
15 Management who has been helping us to institute Human  
16 Capital reform, which should hopefully get some very  
17 key operational reforms in place in advance of the  
18 OPM's visit.

19           This will include, for instance, the  
20 development of a comprehensive, strategic Human  
21 Capital plan that outlines the Commission's key Human  
22 Capital challenges, and provides planned initiatives  
23 to address those challenges; for instance, identifying  
24 and addressing workplace competency gaps, forecasting  
25 retirement and attrition, and developing appropriate

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1 recruitment and retention strategies, and ensuring  
2 that we have the systems in place to create a high  
3 performing and accountable workforce.

4 In addition, we are developing a Human  
5 Capital accountability system, as required by law and  
6 regulation, which will establish a process for  
7 continually improving agency performance by monitoring  
8 and evaluating our Human Capital Management programs  
9 and activities, and identifying and implementing  
10 necessary improvements.

11 Finally, I would like to follow-up on my  
12 recent reports regarding Anti-Deficiency issues. As  
13 the Commissioners may recall, I have reported that the  
14 Commission had deferred approximately \$75,000 of our  
15 fiscal year 2004 rental obligations until FY 05, and  
16 paid that rent with funds from the fiscal year 05  
17 appropriations. When we learned of this deferral, we  
18 had the legal and financial staff focus on what had to  
19 be done to fix those problems.

20 Internal research revealed that the rent  
21 deferral agreement violated two provisions of the  
22 Anti-Deficiency Act. We have now provided the  
23 appropriate notice to the White House, to Congress,  
24 and to other agencies of those violations of the Anti-  
25 Deficiency Act.

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1           We have also informed GSA and made them  
2 aware that we will need to rescind the agreement by  
3 which the \$75,000 in rent was repaid. We expect that  
4 by the beginning of August they will rescind that  
5 agreement, repaying us the \$75,000 taken from our 2005  
6 account, but taking an equal amount of money from our  
7 fiscal year 2004 account. When that takes place, we  
8 will, on the one hand, have an additional \$75,000 for  
9 this year, but we will have a deficiency in our '04  
10 account which is estimated as being approximately  
11 \$56,800.

12           After discussions with OMB and legal  
13 research by agency staff, it is our understanding that  
14 we have an obligation to mitigate that deficiency by  
15 seeking a supplemental appropriation. OMB is working  
16 on this matter, and we are working with them, and we  
17 expect that they will advise us to seek a supplemental  
18 appropriation, which may be in the amount of the  
19 \$75,000 rent that had been deferred.

20           In addition, I have earlier made reference  
21 to an administrative award previously paid out of the  
22 Department of Treasury's General Judgment Fund, for  
23 which our repayment is now required. That was a  
24 significant award based on a 2002 matter. We will be  
25 required to reimburse the Judgment Fund with 2002

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1 money.

2 It appears at this point as if that  
3 repayment will cause a deficiency in our 2002 account.

4 It is the advice of our Office of General Counsel  
5 that that is not, in and of itself, a violation of the  
6 Anti-Deficiency Act requiring the same sort of  
7 reporting that we did for 2004.

8 On the other hand, it will be a deficiency  
9 requiring similar mitigation. OMB is recommending  
10 that we seek supplemental appropriations for the two  
11 years together, and they are working with us in terms  
12 of providing the appropriate paperwork in order to  
13 address the 2002 and 2004 deficiencies.

14 COMMISSIONER YAKI: How much is the '02  
15 number?

16 STAFF DIRECTOR MARCUS: I will be happy to  
17 provide that information in confidence to the  
18 Commissioners. If the Commission requires it to be  
19 provided on the record, I will need advice of counsel.

20 COMMISSIONER YAKI: Oh, no, no. Okay. I  
21 understand it was part of a judgment under a  
22 settlement agreement.

23 STAFF DIRECTOR MARCUS: It is not actually  
24 a settlement agreement. It is an award from an  
25 administrative agency. However, I am advised that

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1 there are Privacy Act protections that prevent us from  
2 going into the details publicly. I can provide in  
3 some other forum the information to the Commissioners.

4 COMMISSIONER YAKI: All right. Thank you.

5 VICE CHAIRMAN THERNSTROM: And are these  
6 supplementals likely to come through? Do you have --

7 STAFF DIRECTOR MARCUS: We don't have  
8 information on that at this point. What we do have  
9 information, is that we are required to seek them. We  
10 are not aware of any adverse ramification to the  
11 agency if they are not granted, but we are required to  
12 seek them by way of mitigation.

13 CHAIRMAN REYNOLDS: So you're saying that  
14 in the event the supp is denied, that we would not  
15 have an obligation to remedy the problem. Once we  
16 make that attempt and fail, we would not have to  
17 repay, or we could not repay the money.

18 STAFF DIRECTOR MARCUS: We've been advised  
19 by legal counsel that we do have an obligation to  
20 mitigate, but that that obligation can be satisfied by  
21 seeking a supplemental request, which we can do by  
22 working with OMB. If the Commissioner is interested  
23 in more detail, we could certainly get further from  
24 our general counsel.

25 VICE CHAIRMAN THERNSTROM: No, but the

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1 question Jerry is posing is if we do not get the  
2 supplemental, what are our obligations at that point?

3 STAFF DIRECTOR MARCUS: It is my  
4 understanding that we have no further obligation then  
5 to seek the supplemental.

6 VICE CHAIRMAN THERNSTROM: I see.

7 STAFF DIRECTOR MARCUS: By seeking a  
8 supplemental, we have satisfied our obligation to  
9 mitigate.

10 COMMISSIONER YAKI: That means we don't  
11 have to go to the blood bank.

12 COMMISSIONER REYNOLDS: At least not for  
13 that issue.

14 CHAIRMAN REYNOLDS: Anything else?

15 VICE CHAIRMAN THERNSTROM: On the question  
16 of the violations of the Anti-Deficiency Act, what is  
17 -- we have reported those violations. What do you  
18 expect down the road as a consequence of those  
19 violations?

20 STAFF DIRECTOR MARCUS: We have reported  
21 the violations and as part of the general reform  
22 efforts, we are developing revised policies regarding  
23 Anti-Deficiency in order to ensure that it won't recur  
24 in the future, so we are taking steps to make sure  
25 that it won't happen again. But there are no specific

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1 penalties to the agency.

2 CHAIRMAN REYNOLDS: These steps that  
3 you're taking to ensure that we don't have this  
4 problem going forward, could you unpack that? Could  
5 you describe some of the measures that we'll take to  
6 reduce the likelihood that this will happen?

7 STAFF DIRECTOR MARCUS: I would be pleased  
8 to do that in a future Commission meeting. What we do  
9 have right now is a process in place for developing  
10 those procedures, and that is going on through the  
11 staff level working groups.

12 CHAIRMAN REYNOLDS: Okay. Any other  
13 questions, comments? Are you done?

14 STAFF DIRECTOR MARCUS: If there are no  
15 further questions, that's my report.

16 CHAIRMAN REYNOLDS: Okay. All right. I  
17 guess before we get to the -- well, as a prelude to  
18 the next issue, the New Hampshire SAC Report. Did  
19 everyone receive a copy of that report? And more  
20 importantly, has everyone reviewed it? Are we ready  
21 to vote on whether we'll accept this or not?

22 VICE CHAIRMAN THERNSTROM: Mr. Chairman, I  
23 personally got it too late in order to review it. And  
24 I am reluctant to vote on reports that I have not had  
25 the time to read. Obviously, if I'm alone in not

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1 having --

2 CHAIRMAN REYNOLDS: You are not. Yes,  
3 Commissioner Braceras.

4 COMMISSIONER BRACERAS: My understanding -  
5 correct me if I'm wrong - is, aren't we supposed to  
6 accept the report unless there are procedural  
7 deficiencies in terms of how it was put together? In  
8 other words, we're not voting on the substance of the  
9 report, and whether or not we agree with the frame and  
10 the format of the report.

11 VICE CHAIRMAN THERNSTROM: Well, I just  
12 raised that question with the Chair, and there seems  
13 to be some confusion over here.

14 COMMISSIONER BRACERAS: We have to accept  
15 it unless there are procedural irregularities, and  
16 maybe I'm wrong.

17 CHAIRMAN REYNOLDS: Well, I'm going to  
18 have to defer to Ken. I don't know how these have been  
19 treated in the past.

20 STAFF DIRECTOR MARCUS: It's my  
21 understanding that procedural irregularities and  
22 quality issues have been raised in the past, as  
23 opposed to substantive objections to the content of  
24 the report.

25 VICE CHAIRMAN THERNSTROM: I don't know

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1        what a quality issue is, as opposed to a substantive  
2        issue.

3                    CHAIRMAN REYNOLDS: Well, let's talk to  
4        someone from staff. Is there anyone here who could  
5        shed some light on this issue? Historically, what  
6        have we done? Yes. And for the record, please state  
7        your name.

8                    MS. DAVIS: Ivy Davis, and I'm the  
9        Director of the Eastern Region. And that, by the way,  
10       is Aonghas St. Hilaire, who is the Social Science  
11       Analyst who is responsible for having written the  
12       report. The issue of quality really deals with  
13       questions of the quality of the writing, in terms of  
14       whether it's a well-written document, I guess,  
15       grammatically for the most part is what we are talking  
16       about, so we're not really voting on the substance of  
17       the report.

18                   This is the SAC's findings, and their  
19        recommendations to you, so the question is whether  
20        you're willing to authorize its publication by the  
21        Commission. And when it's published by the  
22        Commission, unlike Commission reports which are  
23        published by the GPO, these reports are done by  
24        Dorothy in our xerox room. They're xeroxed reports,  
25        and they're made available to members of Congress from

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1 the particular state. If the substance is of a  
2 particular issue that might be important to committees  
3 dealing with those subjects, made available to them,  
4 as well; as well as people in the state.

5 COMMISSIONER BRACERAS: Can I just ask the  
6 question? Are there particular rules that outline our  
7 responsibility with respect to the SAC reports? In  
8 other words, is my understanding correct, and is that  
9 outlined somewhere?

10 MS. DAVIS: The Administrative  
11 Instructions AI 5-7 deal with SAC reports and the  
12 process for producing those reports, getting those  
13 reports to you. There is a checklist that is provided  
14 to the Staff Director as the report goes to the Staff  
15 Director for his review before submitting it to you,  
16 that deals with those questions, as well.

17 COMMISSIONER BRACERAS: But my assumption  
18 that we accept the report other than in cases of  
19 procedural irregularity or poor quality, that's not  
20 just past practice, that is in the AIs.

21 MS. DAVIS: Yes.

22 CHAIRMAN REYNOLDS: And so the motion - we  
23 would basically vote on whether to publish or not.

24 MS. DAVIS: Yes.

25 CHAIRMAN REYNOLDS: Okay. Gotcha.

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1 MS. DAVIS: Okay.

2 CHAIRMAN REYNOLDS: Any other questions  
3 for Ms. Davis? Okay. Thank you. Okay, Vice Chair.

4 VICE CHAIRMAN THERNSTROM: In that case, I  
5 remove my statement of -- erase my statement of  
6 reluctance because we're not voting on the substance  
7 of this. As I said, I raised that question earlier  
8 and there was some confusion here about whether --  
9 what our obligations were, and I think it is now  
10 clarified.

11 CHAIRMAN REYNOLDS: Okay. But there still  
12 remains an issue. Are we ready to vote to -- decide  
13 the issue whether we will publish this document.

14 VICE CHAIRMAN THERNSTROM: And I move that  
15 we do vote to publish this document.

16 CHAIRMAN REYNOLDS: Is there a second?

17 COMMISSIONER TAYLOR: I'll second.

18 CHAIRMAN REYNOLDS: Discussion? All in  
19 favor.

20 (Vote taken.)

21 **State Advisory Committee Issues**

22 CHAIRMAN REYNOLDS: Okay. Any objections?  
23 Okay. The motion carried. Next up, the rechartering  
24 process for State Advisory Committees. I'd like to  
25 move that the Staff Director develop amendments to the

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Commission's regulations and policy so that the following occurs. (A) The Commission Staff will recommend for State Advisory Committee membership persons that represent a diversity of skills and experiences, including but not limited to Social Science methodology, legal research and analysis, statistical methods and technical writing and editing; (B) Commission Staff will recommend for State Advisory Committee membership persons who have demonstrated an interest in Civil Rights issues that relate to race, religion, sex, age, disability, or national origins in addition to voting rights, this motion will more closely align the State Advisory Committee members of interest with the agency's jurisdictions and will supersede the prior policy pursuant to which State Advisory Committees were required to recommend men or women interested in women's rights and disability rights, racial minority members, subject matter experts, but which does not expressly track the agency's statutory mandate.

This motion does not alter Commission policy with respect to drawing State Advisory Committee members from people knowledgeable of the State's governmental machinery and public service sector, and people involved in and drawn from such

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1 influential sectors as business and financial  
2 communities, organized labor and the news media, and  
3 finally religious groups. (C) Commission Staff will  
4 follow the policy of non-discrimination when  
5 recommending individuals for State Advisory Committee  
6 membership.

7 The Staff Director will propose regulatory  
8 language to amend 45 CFR, Section 703.5(b) to replace  
9 the requirement that the State Advisory Committees be  
10 reflective of the different ethnic, racial, and  
11 religious communities within each state, and  
12 representative -- with respect to the sexes, political  
13 affiliation, age, handicap status. This function will  
14 also supersede prior policies pursuant to which all  
15 minority group members on a State Advisory Committee  
16 are to be no less than 40 or more than 55 percent of  
17 the committee, and pursuant to which minority  
18 membership on the committee would roughly reflect the  
19 ratios in which minority members are found in the  
20 state's population. This motion is not intended to  
21 alter current agency guidance providing that no  
22 political party be more than 50 percent of a State  
23 Advisory Committee's membership.

24 That was a lot to digest. May I have a  
25 second.

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1 VICE CHAIRMAN THERNSTROM: Second.

2 CHAIRMAN REYNOLDS: Discussion? Yes.

3 COMMISSIONER YAKI: She's more senior.  
4 Commissioner Braceras.

5 COMMISSIONER BRACERAS: I support this  
6 motion, but I have a couple of questions, and the  
7 first is whether we might want to add a provision that  
8 would term limit members of the SACs. I don't know if  
9 that's been discussed at all.

10 CHAIRMAN REYNOLDS: No, at least not to my  
11 knowledge that particular issue hasn't been discussed,  
12 but this is a good opportunity to have that  
13 conversation.

14 COMMISSIONER BRACERAS: Okay. So that's  
15 one issue I just wanted to put on the table and open  
16 up for discussion. And secondly, and this goes back  
17 to the discussion we just had with Ms. Davis about the  
18 substance of the reports from the SACs and our  
19 regional offices, and what our responsibility is in  
20 terms of approving reports that don't come directly  
21 out of the Commission. And my question is, are we  
22 looking at larger issues of reform in terms of the  
23 Commission and Commissioners' role in approving the  
24 content of reports that we don't produce?

25 CHAIRMAN REYNOLDS: Well, as written, this

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1 motion does not deal with that issue.

2 COMMISSIONER BRACERAS: No, I know that it  
3 doesn't deal with it. My question is, are we  
4 beginning the process of looking at that issue?

5 CHAIRMAN REYNOLDS: Well, I guess the way  
6 I would interpret it is, should we? And let's talk  
7 about it. Do you have anything in mind in terms of  
8 reform measures?

9 COMMISSIONER BRACERAS: Well, yes, but I'm  
10 not sure this is the appropriate forum right now for  
11 discussing the nitty-gritty of that. I'm just  
12 wondering whether we are looking beyond the re-  
13 chartering process to the Commission's role in  
14 publishing reports that we don't directly have a hand  
15 in, and whether that process needs to be reformed.

16 CHAIRMAN REYNOLDS: It sounds like we need  
17 to have some additional conversations on that issue,  
18 and I think we should all just give this some thought,  
19 and try to frame out the issues for a subsequent  
20 meeting. I don't think that we have enough time to  
21 flesh this issue out right now.

22 COMMISSIONER BRACERAS: No, of course not.  
23 I just think as we begin the process of reforming the  
24 Commission, in addition to the reforms we passed last  
25 time, which were internal reforms to the Commission

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1       itself, and the reforms we're looking at in terms of  
2       the budget, a third area we need to begin to look at  
3       is how we deal with the substance coming out of the  
4       regions and the SACs.

5               CHAIRMAN REYNOLDS:   Okay.

6               COMMISSIONER BRACERAS:   Not just the  
7       reports, but the projects that they propose, and the  
8       briefings they may put on, and all of their work. I  
9       think we need to begin to look at what is our  
10      relationship with the SACs in terms of shaping their  
11      agenda, or endorsing their agenda.

12              COMMISSIONER REYNOLDS:   Would it be  
13      helpful if we have the Staff Director prepare a  
14      document that discusses in detail the current  
15      relationship between headquarters and the SACs?

16              COMMISSIONER BRACERAS:   Yes, I suppose. I  
17      don't want to create more work. Maybe it's something  
18      that we want to establish, yet another working group  
19      on or something that we can just have informal  
20      conversations about. I just raise it for the  
21      peripheral vision of the other commissioners.

22              VICE CHAIRMAN THERNSTROM:   Commissioner  
23      Yaki goes next, actually. You're next.

24              COMMISSIONER YAKI:   Oh, okay. I have  
25      several questions on the motion. The first one as a

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1 preliminary issue is, what is the status of -- do we  
2 actually have proposals for rechartering pending?

3 CHAIRMAN REYNOLDS: Yes.

4 COMMISSIONER YAKI: And how many of them  
5 are there?

6 CHAIRMAN REYNOLDS: Oh, I can't give you--

7 COMMISSIONER YAKI: I know we got that  
8 letter from the New Jersey --

9 CHAIRMAN REYNOLDS: There are quite a few.  
10 Ken, do you have a better form of numbers?

11 STAFF DIRECTOR MARCUS: There are roughly  
12 two-thirds or more of the State Advisory Committees  
13 for which the charters are either due or overdue for  
14 rechartering, and they are in various stages in the  
15 pipeline. Some of them are still being looked at by  
16 Regional Directors, some of them have gotten to  
17 Washington, some of them are in different levels of  
18 review, so they're all along the pipeline.

19 COMMISSIONER YAKI: Does the process of  
20 ratifying a charter include ratifying the membership,  
21 so the membership is proposed at the time of the  
22 rechartering, or not?

23 STAFF DIRECTOR MARCUS: It's my  
24 understanding that those happen simultaneously.

25 COMMISSIONER YAKI: Okay. That was my

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1 concern, because the first question I have is, in  
2 adopting these reforms, what impact would that have on  
3 those charters that are either at headquarters or  
4 already pretty much developed in the pipeline with the  
5 RDs. Would this basically throw them all back in the  
6 pond to start over again, because obviously, they were  
7 developed under criteria that was anti to whatever  
8 would be enacted today.

9 CHAIRMAN REYNOLDS: I think that that's a  
10 choice for the Commissioners, and there have been --  
11 some SAC members have written and requested that we  
12 approve the rechartering under the current criteria.  
13 I have concerns with that primarily because of these  
14 ratios that are included in the document. I don't  
15 think that Congress could pass a statute with these  
16 hard numbers, so my concern is one of legality, but I  
17 open up the floor for other comments.

18 COMMISSIONER YAKI: I guess my question  
19 would be have we had OGC look at that in terms of the  
20 Chairman's concerns? These regulations have been in  
21 effect for quite some time, and has OGC opined whether  
22 or not these regulations run afoul of any existing law  
23 or constitutional provision? I would want that before  
24 myself, I would feel comfortable about doing that  
25 because I actually have serious reservations about

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1 changing parts of these guidelines that deal with the  
2 desire.

3 And maybe this is all in the wordsmithing,  
4 but I would be amenable to language that would  
5 eliminate a strict or even range of percentages, but I  
6 do believe that it's important for the SACs to (one)  
7 be at least generally reflective of the population of  
8 the state that they represent, number one. And number  
9 two, in that in some way we encourage and make extra  
10 efforts to ensure that those groups who we ostensibly  
11 are the watchdogs for are also members of the SACs, as  
12 well. And I think that diversity is a very important  
13 goal, and I think that the composition of the SACs to  
14 reflect that diversity should be a very important  
15 goal.

16 Do I think, necessarily, that it has to be  
17 at 40, or 50, or 60 percent? Not necessarily, but I  
18 think that to completely eliminate any reflection  
19 requirement or goal is -- I think would stray from  
20 what it is we were created to do, and who we're  
21 supposed to represent.

22 And finally, just as a comment on  
23 Commissioner Braceras' question about term limits, I  
24 hate term limits, and I think that as a personal  
25 issue, but as a policy issue, I think that if we were

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1 to do one, it would have to be extremely liberal,  
2 because sometimes membership is hard to find. We're  
3 asking people to volunteer and give of their time.  
4 Institutional memory is an important component in what  
5 it is that we do, and given the short time frames in  
6 which these SACs exist in terms of their terms of  
7 life, I think that we should be very careful about  
8 enacting term limits on membership in these  
9 committees. So those are my concerns right now.

10 CHAIRMAN REYNOLDS: Okay. I'll try to  
11 respond to some of them. I do believe that having OGC  
12 take a look at this - that would be a good idea,  
13 although I'm fairly confident that at least with  
14 respect to the numbers, a quota is hard to defend.  
15 And the probability that that would pass legal muster,  
16 I believe, is quite low.

17 With respect to diversity, there are ways  
18 to achieve diversity - there are good ways and there  
19 are bad ways. And I think that we need to have some  
20 further discussions about how we can ensure that we  
21 have a policy where people are free to join the  
22 process. And it's interesting because this is, I  
23 guess, our first conversation where we'll have a  
24 debate over first principles. My preference is a non-  
25 discrimination policy, as opposed to achieving a goal,

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1 which in my view often evolves into numbers. And  
2 finally, with respect to term limits, I think that  
3 there are arguments on both sides, and many of the  
4 things that Commissioner Yaki said with respect to  
5 this issue, I agree with.

6 But I guess another concern that I have to  
7 -- that is a counterbalance is the fact that I think  
8 it's healthy that we, from time to time, get new blood  
9 on the SACs, and for the Commission. I don't think  
10 it's a good idea to have someone occupy a seat for  
11 ten or --

12 COMMISSIONER BRACERAS: Almost 30 years,  
13 for example.

14 CHAIRMAN REYNOLDS: Be nice. In any event,  
15 those are my comments. Commissioner Braceras.

16 COMMISSIONER BRACERAS: Putting the term  
17 limits issue aside for just a minute, because I didn't  
18 mean to throw a monkeywrench into this, and maybe  
19 that's something that we can take up separately; but  
20 just addressing Commissioner Yaki's concern. I think  
21 maybe we can just tinker with the language of this  
22 particular motion so that Commissioner Yaki will feel  
23 more comfortable with it, and we can still achieve the  
24 goal we're trying to achieve here.

25 I hesitate to ask OGC to take a look at

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1 it, because we are so under-staffed, and that seems to  
2 me to be a bit of a waste of time, because regardless  
3 of whether or not -- well, I think it's pretty clear  
4 that the numerical goal here is a quota that has some  
5 legal problems. But even if you disagree with my  
6 conclusion, as a matter of policy, I think it's  
7 probably not wise to have it. And I suspect that a  
8 majority of the Commissioners agree with that, so I  
9 don't think we need a legal determination that the  
10 particular provision doesn't comply with the law in  
11 order to change the provision. So I'd rather not  
12 waste OGC's time with that, and I'd rather just try to  
13 address Commissioner Yaki's concerns by tinkering with  
14 the language as written, and maybe we just need to say  
15 that we will consider all forms of diversity in making  
16 these appointments. And I don't know if a sentence  
17 like that would help. But certainly, I think given  
18 the mission of this Commission, we're all committed to  
19 having the people for whom we're a watchdog be  
20 involved in the process, and to have stakeholders be  
21 involved in the process, and I don't think anything in  
22 this as written precludes that. It seems that  
23 Commissioner Yaki just wants to make sure that we  
24 continue to consider that, but as I read what the  
25 intention of this particular motion, is to eliminate a

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1 hard and fast quota, so maybe we just want to amend  
2 it.

3 CHAIRMAN REYNOLDS: Well, Commissioner  
4 Yaki, would you feel comfortable with including some  
5 geographical diversity? Would that allay some of your  
6 concerns?

7 VICE CHAIRMAN THERNSTROM: Or just some  
8 more general language that gets at your concerns, but  
9 is not quite -- doesn't flirt with quotas.

10 COMMISSIONER BRACERAS: And also, I would  
11 note here that it says, "The Staff Director will  
12 propose regulatory language to amend", so in other  
13 words, we don't have the actual language yet. This  
14 motion is authorizing the Staff Director to propose  
15 language, which we don't yet have in front of us.

16 COMMISSIONER YAKI: Well, Mr. Chair, if I  
17 may speak.

18 CHAIRMAN REYNOLDS: Yes.

19 COMMISSIONER YAKI: I continue to have two  
20 concerns about this. One is a concern raised in  
21 response to my question about the impact on re-  
22 chartering, and this will undoubtedly have an impact  
23 on the re-chartering done by the RD's. I mean,  
24 obviously, part of my questioning has to do with  
25 whether or not this was developed at all in

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1 consultation, or even with notice to the RD's, or to  
2 the SAC chairs, number one. And number two, is that I  
3 know full well the wording of pretty much all the  
4 Supreme Court cases that deal with the word "quota".  
5 I am not saying that we need to do anything like that,  
6 or even as the Vice Chair says, to flirt with it, but  
7 I do think that when I talk about diversity, and when  
8 I talk about the efforts that need to be made, that I  
9 think that there should be a goal spelled out about  
10 attempting to be reflective of the diversity of the  
11 state population that the SAC is supposed to  
12 represent. I think it's an important principle that  
13 as the Commission, we shouldn't stray from. If there  
14 is a way to write some language that would be amenable  
15 to the majority of the Commission on this one, I would  
16 be glad to attempt to do it. I don't know if right  
17 now is the time, or if this is something that should  
18 be done when the Staff Director promulgates the rules  
19 and regulations that we're simply authorizing him to  
20 do, so I leave that there.

21 CHAIRMAN REYNOLDS: I'm sorry. A quick  
22 response. Your question about whether the SACs were  
23 involved, the answer is no. My view is that right now  
24 we need to try to agree to a concept amongst  
25 ourselves, and later on in the process SACs would be

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1 pulled into the process. And, in fact, I believe that  
2 any way would have to be published in the *Federal*  
3 *Register*. There would be notice and comment, so there  
4 would be ample opportunities in the future for all the  
5 stakeholders to weigh-in on the issue. Commissioner  
6 Taylor.

7 COMMISSIONER TAYLOR: I want to speak in  
8 favor of the motion for this reason, the first reason  
9 - several reasons, the first being the one you just  
10 articulated; that is, I view this as the beginning of  
11 the process, not the end of the process. We haven't  
12 really even started the discussion, the issue on the  
13 question of diversity, and where we are. That issue  
14 hasn't been joined yet. What this does, though, is it  
15 allows us, I think, to begin the process of having  
16 that discussion. I think we need to start that  
17 immediately, and so I would favor the motion. I would  
18 favor passing this motion. If we want to add language  
19 such that the SAC Directors and the folks in the  
20 region are included in this process, have an  
21 opportunity for input prior to us receiving the  
22 recommendations of the Staff Director. I'm in favor  
23 of that, but I don't think that's reason to put this  
24 off.

25 I am concerned in the re-chartering

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1 process if we are going to do nothing more than rubber  
2 stamp the folks that are currently on those SACs. And  
3 if we do that in this context, I think we should make  
4 a policy decision as a body relative to the process  
5 that they should use to determine both positions and  
6 the process they use to develop projects. Now is the  
7 time to do that, and this motion would allow us to do  
8 that. So I would favor starting the process, starting  
9 it now and addressing all of these issues in that  
10 process, but it's not a reason, in my view, to put it  
11 off.

12 CHAIRMAN REYNOLDS: Okay. Commissioner  
13 Kirsanow.

14 COMMISSIONER KIRSANOW: I concur with  
15 Commissioner Taylor. Let's move on.

16 CHAIRMAN REYNOLDS: All right.  
17 Commissioner Braceras.

18 COMMISSIONER BRACERAS: Just one quick  
19 comment, and a question. The comment is, I just  
20 noticed in the briefing materials we received that it  
21 does look as if federal law requires us to consider "a  
22 cross-section of those directly affected, interested,  
23 and qualified as appropriate to the nature and  
24 functions of the committee."

25 In other words, it seems that federal law

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1 and regulations already require us to consider the  
2 people affected, and by nature of the work we do, the  
3 people affected are minorities and people of color,  
4 and people from diverse backgrounds, so that is sort  
5 of built into the process already.

6 My question would just be to ask the Staff  
7 Director to comment on this from his perspective, and  
8 address some of the concerns that have been raised.

9 STAFF DIRECTOR MARCUS: I'd be happy to,  
10 Commissioner. There have been so many concerns that  
11 have been raised that I'm not sure --

12 COMMISSIONER BRACERAS: Well, in  
13 particular, are we correct that what this motion does  
14 is authorize you to come back to us with specific  
15 language?

16 STAFF DIRECTOR MARCUS: Yes, that's right.  
17 Now I believe that to effectuate the change embodied  
18 in this motion, we would need to change various  
19 documents. One would be the regulation. Of course,  
20 we'd have to come to you with a regulation, and a  
21 proposed regulation. There are other possible changes  
22 to a regulation that we might make at that time based  
23 on prior discussions within the Commission.

24 A second set of changes would involve  
25 changes to the memorandum of my predecessor, Wilfredo

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1 Gonzalez, of December 17, 1991, which is extensively  
2 quoted in the memorandum from which you're reading  
3 right now, and which was just distributed earlier this  
4 morning. The proposed language changes to the  
5 Gonzalez memo have already been suggested here. It's  
6 changes to the regulation that would have to be  
7 proposed.

8 Now you might see from the Chairman's  
9 memorandum that the regulatory language itself is  
10 fairly slight. The regulation, for instance, does not  
11 specify either the 40 percent quota, if it's a quota,  
12 or the 65 percent cap, but rather provides only for  
13 the requirement that the membership be reflective in  
14 various ways.

15 There are various options that the  
16 Commission has. One would be to retain the regulatory  
17 language, but to change the language from the Gonzalez  
18 memo. That could be done fairly easily and fairly  
19 quickly, and we have potential language here. If the  
20 change that the Commission wants is to change the  
21 regulatory language as provided for in the Chairman's  
22 motion, then we can provide additional language for  
23 you, and it would not be terribly difficult because  
24 the regulatory language is fairly short.

25 CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

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1           VICE CHAIRMAN THERNSTROM: In developing  
2 amendments to the Commission's regulation and policy,  
3 I would like those amendments to reflect a partisan  
4 diversity of this Commission, and alas, we are down to  
5 only one democrat. And I wonder if we could alter  
6 this motion. I think Commissioner Yaki has raised  
7 some legitimate questions here. I wonder if we could  
8 alter this motion such that the Staff Director develop  
9 amendments working in consultation with both the Chair  
10 and Commissioner Yaki, so that perhaps we could come  
11 to some kind of bipartisan agreement here on the  
12 substance of the proposed policy. I don't want to run  
13 roughshod over the questions that Commissioner Yaki  
14 has raised.

15           I also think that when you come back to  
16 us, that the question that Commissioner Braceras of  
17 exactly what our relationship is to the SACs and our  
18 role or non-role in reviewing the substance of reports  
19 and so forth. Those are extremely important  
20 questions. I mean, this is one agency, and the SACs  
21 are part of it. And so that that needs to be part of  
22 the package.

23           CHAIRMAN REYNOLDS: Well, for me, at least  
24 conceptually, I view these as two related issues; one  
25 is establishing the criteria for re-chartering, and

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1 the other one is more substantive. And if we combine  
2 the two, if we deal with both issues, I just want --  
3 the backlog that continues to build, we won't remedy  
4 that problem for a while, because I think that it will  
5 take a meeting or two to get our arms around --

6 COMMISSIONER BRACERAS: I think we should  
7 deal with this first and separately. But I think what  
8 Commissioner Thernstrom and I were suggesting is just  
9 that down the road if the process has not already been  
10 started, that we consider the broader relationship,  
11 and that Commissioners be involved in that discussion  
12 through some sort of working group or what have you,  
13 down the road.

14 VICE CHAIRMAN THERNSTROM: Well, that's  
15 fine. And let's go back to my first suggested  
16 amendment, which is that the number one, which would  
17 be I move that the Staff Director develop amendments  
18 to the Commission's regulation and policy. I would  
19 like to add in consultation with both the Chair and  
20 Commissioner Yaki, reflecting the bipartisan nature of  
21 this Commission.

22 CHAIRMAN REYNOLDS: Is there a second?

23 COMMISSIONER BRACERAS: Second.

24 CHAIRMAN REYNOLDS: Did you smile,  
25 Commissioner Yaki, at that comment?

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1 COMMISSIONER BRACERAS: Just to accept it  
2 as a friendly amendment.

3 COMMISSIONER YAKI: I was thinking as a  
4 self-interested party, I couldn't second it. I just  
5 want to -- this is just the last comment I'm going to  
6 make on this, and then let's move and vote on this.  
7 My concern about the process involving the SACs and  
8 the re-chartering in the regions is that we're at a  
9 time where we're looking to try to make some moves  
10 with regard to Capitol Hill, and I just want to make  
11 sure we have as many friends as possible during that  
12 time period than not. And my only concern was that  
13 doing this without warning or notice to them might  
14 lose us some of those. That's my concern. I think  
15 that in the spirit of the Vice Chair's amendments,  
16 that will help make things calm down a little bit, and  
17 thank you very much.

18 CHAIRMAN REYNOLDS: Okay. Do we have a  
19 second?

20 COMMISSIONER KIRSANOW: Second.

21 CHAIRMAN REYNOLDS: All right. All in  
22 favor.

23 (Vote taken.)

24 CHAIRMAN REYNOLDS: Any objections? Okay.

25 The motion as amended carries. Okay. Well, this

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1 motion to the re-charter packages, I think that that  
2 has to be put off in light of the discussion that's  
3 taken place.

4 VICE CHAIRMAN THERNSTROM: Right.  
5 Definitely.

6 **Program Planning**

7 CHAIRMAN REYNOLDS: Okay. In light of  
8 that, we're up to program planning. I move to discuss  
9 the substance of the Office of Civil Rights Evaluation  
10 Report entitled "Federal Funding of Civil Rights", and  
11 to provide the Staff Director with guidance as to the  
12 content of the same. Commissioner Braceras.

13 COMMISSIONER BRACERAS: I'm sorry. So  
14 just to be clear, we passed the first motion, and  
15 we're deferring number two?

16 VICE CHAIRMAN THERNSTROM: Right.

17 CHAIRMAN REYNOLDS: Yes. The first motion  
18 as amended --

19 COMMISSIONER BRACERAS: As amended, right.

20 CHAIRMAN REYNOLDS: And deferring --

21 COMMISSIONER BRACERAS: Deferring number  
22 two.

23 CHAIRMAN REYNOLDS: Yes.

24 COMMISSIONER BRACERAS: Okay. Thank you.

25 CHAIRMAN REYNOLDS: Okay. With respect to

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1 the funding report, may I have a motion?

2 COMMISSIONER KIRSANOW: What are we moving  
3 to do?

4 CHAIRMAN REYNOLDS: I'm sorry. I don't  
5 need a motion to discuss it. Anyway, the funding  
6 report was circulated. Any thoughts? And also, I  
7 just want to make clear that the -- and Commissioner  
8 Yaki raised this in an email, I believe, last week,  
9 that we're going to try to, to the extent that we can,  
10 apply the changes in procedure with respect to --

11 COMMISSIONER YAKI: The Braceras rules.

12 CHAIRMAN REYNOLDS: I'm sorry?

13 COMMISSIONER YAKI: The Braceras rules  
14 let's call it.

15 CHAIRMAN REYNOLDS: Yes. Yes. To the  
16 extent possible, we will try to apply the Braceras  
17 rules. The report was distributed. Any comments?  
18 Commissioner Braceras.

19 COMMISSIONER BRACERAS: I think most of  
20 the people here know that since the beginning of my  
21 tenure on the Commission, I've had some doubt about  
22 the usefulness of this type of report, because I  
23 simply don't believe that dollars always translate  
24 into results. But in any event, I think since a large  
25 part of the work has been done, I have no objection to

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1 publishing the raw data, and the charts and the tables  
2 are very useful, actually, but I prefer to let the  
3 public draw their own conclusions from that set of  
4 data, and not to opine on what the numbers mean.

5 I do appreciate the consideration into  
6 some of the variables that Commissioner Redenbaugh had  
7 earlier suggested, including inputs and outputs, but I  
8 do think that this is the type of document that's best  
9 when we let the numbers speak for themselves, and do  
10 very little editorializing.

11 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

12 COMMISSIONER KIRSANOW: Yes. It appears  
13 to me this document is a little bit different than the  
14 ones I've seen in the past while serving on the  
15 Commission, in so far as Commissioner Braceras has  
16 indicated this pays much more attention to the  
17 Redenbaugh concerns related to inputs. And I saw a  
18 lot more inputs here. There are a lot of references  
19 to the various standards set by various agencies  
20 related to how they monitor their own effectiveness.  
21 And there's kind of a generalized assessment of their  
22 effectiveness based on both inputs and outputs. So  
23 from my standpoint, I think that this is a qualitative  
24 - I'm not sure I want to say improvement - but a  
25 qualitative difference from where we were before, that

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1       comports more readily with some of the concerns other  
2       Commissioners have addressed to this particular report  
3       in the past, so I'd like to commend Staff in that  
4       regard.

5               And I had one question with respect to the  
6       conclusion, because it's quite interesting. It seems  
7       to me that Staff is being asked to do things that are  
8       extremely difficult to do in terms of assessing this  
9       particular issue; and that is, I note that on the one,  
10      two, three, four, fifth paragraph of the conclusion,  
11      it notes that there's a great variation in how these  
12      various agencies apply GPRA. For example, GPRA goals  
13      relate to Civil Rights, EEOC's uses 24 separate goals  
14      to measure success, while OFCCP uses 6 goals. And  
15      it's very difficult, it seems to me, to try to come to  
16      a uniform conclusion related to the success of various  
17      agencies in accomplishing their objectives when  
18      they're measuring their own objectives differently.  
19      And I just had a question for, I guess it would be  
20      Terri, or I'm not sure who would be the appropriate  
21      person, but is there any way of coming up with more  
22      normative or maybe a common denominator that all  
23      agencies use in trying to assess their goals, and  
24      whether or not they're succeeding? And I know that's  
25      difficult to do. You've got 24 here and 6, but are

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1       there any kind of baseline indices that you could look  
2       to to try to measure their effectiveness?

3               MS. DICKERSON: I guess the answer to that  
4       is that we don't know the answer to that, unless we  
5       were to actually spend a bit more time on this  
6       analysis, or on one particular agency, and also  
7       understanding how the process that they go about to  
8       determine their evaluation factors, and looking at  
9       what goes into that process, and making some  
10      comparison among agencies, which we weren't able to do  
11      with this level report.

12             STAFF DIRECTOR MARCUS: If I may add to  
13      that, we've had considerable discussion of just that  
14      question. I mean, implicit in this comment about the  
15      limited nature of the GPRA goal used by agencies is  
16      the question: well, what goals would make more sense?  
17      Would it make more sense for them to use the same  
18      goals? Would it make more sense for agencies to  
19      reconsider the goals they're using?

20             Now given that this is not one of the so-  
21      called major projects of the agency, the resources  
22      have not been there. It could be done, certainly.  
23      One could imagine a report not just on funding of  
24      agencies, but also on results, which looks not just at  
25      the ability of agencies to meet the GPRA goals that

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1 they set for themselves, but also that asks questions  
2 like what sorts of results make sense? How should  
3 success be measured? And according to more sensible  
4 measures of success, how are agencies doing?

5 That sort of report is feasible, and could  
6 be very valuable. It would be a major report  
7 requiring not just one staff member, but several staff  
8 members, and it might be that one could only do it for  
9 perhaps one or a few agencies at a time, as opposed  
10 for all of them.

11 COMMISSIONER KIRSANOW: It seems to me  
12 that when you've got this type of disparity with  
13 respect to how various agencies measure their own  
14 outputs, that a lot of game playing can be done, and  
15 we can never really assess -- strike that. We have a  
16 more difficult job of assessing what's actually  
17 occurring at the agency level.

18 I look at the various inputs in this  
19 report, an evaluation of certain outputs, the  
20 different conclusion of certain agency investigations;  
21 for example, EEOC - whether or not they're undertaking  
22 investigations, or they're closing out reports, or  
23 merit closure, so on and so forth. If various  
24 agencies have different standards, we don't have any  
25 uniform standard by which to measure agencies against

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1 one another.

2 And just as a thought for the future,  
3 because I am interested in this kind of report - I  
4 think it is useful. It's obviously part of our  
5 function to do something like this, but as an  
6 observation, it may be that in the future if we do  
7 another report like this for next year, that we try to  
8 assess precisely what you have been talking about, Mr.  
9 Staff Director, that we take a closer look at some of  
10 these issues we can gauge. Maybe we can provide some  
11 guidance as to what type of standards need to be met.

12 STAFF DIRECTOR MARCUS: We have actually  
13 discussed issues of that sort, Commissioner Kirsanow,  
14 and it does seem that a report of that sort would be  
15 feasible, and potentially very valuable, but it would  
16 probably require the resources of a major report.  
17 This is not one of the reports that was previously  
18 adopted by the Commission for 2006, at this point.

19 CHAIRMAN REYNOLDS: Commissioner Yaki.

20 COMMISSIONER YAKI: Yes. I just want to  
21 commend the Staff for this report. And I think that,  
22 as Commissioner Kirsanow just said, this is an  
23 extremely valuable report that we have put out for  
24 quite some time, and I know that when this report was  
25 published in the late 90s, it certainly skewered that

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1 administration, not only skewered but just pointed out  
2 a snapshot of what was going on during that time  
3 frame. And perhaps they weren't happy about it, maybe  
4 other administrations aren't happy with it when we put  
5 this out, but the fact is, is that as an independent  
6 agency, I think part of our job is to provide the  
7 little nudge, provide the little poke, if there is  
8 one, if those conclusions are to be drawn from the  
9 data that is compiled through these reports.

10 I actually found that it was pretty  
11 consistently neutral in its tone, and even the  
12 conclusions I thought were more restatements of the  
13 narrative that is important to help make sense of some  
14 of the text when you put it in its right context. I  
15 think that this is the kind of report that should be  
16 something that we do each year. I know that in our  
17 last meeting, I was the only one who voted for the FY  
18 07 version of this, but I would hope that we would  
19 keep that under consideration, because as an agency,  
20 and because we have the investigatory powers given to  
21 us by Congress, we have the ability to get data that  
22 the public cannot get. And we have the ability to  
23 pool together data from all the different agencies  
24 that deal with Civil Rights in the federal government  
25 that other people cannot do, except on a piecemeal

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1 basis, or through FOIA, or through wading through  
2 charts and tables that may not be all that  
3 recognizable. We have, obviously, the skill-set to do  
4 it. We've been doing this for quite some time. Is  
5 that correct?

6 COMMISSIONER BRACERAS: Yes.

7 COMMISSIONER YAKI: And we know what to  
8 ask, we can send this out routinely. This does not  
9 seem like it takes a vast amount of time to do, and I  
10 think it's extremely useful to our constituencies, to  
11 policymakers, and to the general public to see what  
12 the federal government is up to. And I think that the  
13 inclusion of the strategic outputs and performance is  
14 a good and appropriate step which wasn't there before.

15 I think that the addition of it makes it better, and  
16 I think that the questions that Commissioner Kirsanow  
17 raised in terms of now we know what the outputs are.  
18 Now we really need to know what the inputs were to  
19 understand the outputs, and whether or not there's  
20 commonality, could be a very good major report and  
21 very useful to Congress and to the Executive Branch.  
22 But I just want to commend the Staff for doing this,  
23 and I would hope that the Commission would reconsider  
24 doing it in the future.

25 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

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1                   COMMISSIONER   KIRSANOW:    Yes.       After  
2   reviewing this report, I'm persuaded that I may have  
3   been mistaken in voting against doing this type of  
4   report for next year. I took a good hard look at the  
5   report. I concur with Commissioner Yaki, that I  
6   thought that it was neutral in its assessment. I think  
7   you have to come up with some conclusions based on the  
8   data that you do have, and I think those conclusions  
9   based on what I read in terms of the data, made  
10   perfect sense. And I'm not sure if it's consistent  
11   with Roberts Rules of Order since we have already  
12   voted on this, but I'm going to give some more thought  
13   to whether or not we should put forth another motion  
14   sometime in the future to revisit this, incorporating  
15   some of the concerns that I raised previously and the  
16   Staff addressed with respect to making this maybe a  
17   more full-blown report, consistent with our  
18   limitations in terms of resources. I think this is,  
19   frankly, quite valuable. And I am a skeptic when it  
20   comes to money, but this is not what this report  
21   reflects.

22                   STAFF DIRECTOR MARCUS: Since Staff have  
23   been commended, on behalf of the Staff, I'd like to  
24   thank the Commissioners for their kind remarks, and to  
25   point out that under the direction of Terri Dickerson,

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1 the principal staff member responsible for the good  
2 work that you recognize is Margaret Butler, who is  
3 with us today.

4 CHAIRMAN REYNOLDS: Good job. Well, my  
5 comments. I read the document and there's just a  
6 wealth of good data in here, but the data raises  
7 questions. In some years, the appropriations will  
8 remain flat, but the number of cases resolved at a  
9 particular agency will, in some cases, go up, go down,  
10 remain the same, so I'd like to see some analysis in  
11 terms of correlations.

12 Also, I served at the Department of  
13 Education and the Department of Justice, and I am  
14 familiar with some of the games that those particular  
15 agencies play in terms of the numbers. For example,  
16 at the Department of Education, at the Office for  
17 Civil Rights, the GPRA standard, at least one of them,  
18 is resolving 80 percent of the cases that come through  
19 the door within 180 days. One question that I would  
20 like us to ask is whether that is a meaningful metric?

21 Have they come close to ever missing that? Are  
22 agencies picking GPRA standards that they know that  
23 they can easily meet? We are the watchdogs, and our  
24 job entails holding people's feet to the fire. And if  
25 they're coasting, we should point that out.

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1           Also, not picking on the Office for Civil  
2 Rights, but there is a change during the 90s where the  
3 agency went from having full investigations with  
4 respect to complaints to a resolution model where  
5 there was a solution, a canned resolution agreement,  
6 but a very truncated investigation. When I was there,  
7 I said no, in order to ensure that we have captured  
8 the entire scope of the problem, we need to gather  
9 sufficient evidence through an investigation, because  
10 I didn't want to be in a position of imposing  
11 requirements on schools that had not sinned, or  
12 letting schools get away with discriminatory conduct  
13 because my canned resolution agreement did not cover  
14 the full scope of the problem, so I think that we need  
15 to take a hard skeptical look at the data that we  
16 receive from federal civil rights agencies.

17           COMMISSIONER YAKI: I think that's  
18 Commissioner Kirsanow's point, and the Staff  
19 Director's point about it. And if I just may say,  
20 when we were all kind of a little punchy at the last  
21 meeting, at the very last meeting, after you left, it  
22 just went to heck. The Vice Chair just lost all  
23 control. There was a flask, I saw, you know --

24                           (Laughter.)

25           COMMISSIONER YAKI: I'm just kidding. But

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1 what was interesting is that I remember that we were  
2 seriously discussing the fact that for `07, none of us  
3 were extremely happy with the choices that had been  
4 presented to us for the major reports for `07. And it  
5 sounds to me like we're approaching consensus from you  
6 with the Commissioner and myself about what the major  
7 report for `07 should be.

8 CHAIRMAN REYNOLDS: Well, I think that  
9 there are a number of people around the table who  
10 would like to see some additional work, and the  
11 continuation of this report after having an  
12 opportunity to go through it, but one question that  
13 Commissioner Kirsanow raised is our ability to reshape  
14 this document. Well, I guess we'll have to make some  
15 choices. I mean, we could revisit the decisions that  
16 we made with respect to `07, and it sounds like that  
17 we'll probably go down that road at a future meeting.

18 VICE CHAIRMAN THERNSTROM: We do not need  
19 to do it today.

20 CHAIRMAN REYNOLDS: Okay. Commissioner  
21 Braceras.

22 COMMISSIONER BRACERAS: Just where do we  
23 go from here on this particular report?

24 CHAIRMAN REYNOLDS: Oh, these hard  
25 questions. It seems to me that there is a consensus

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1 that -- at least a preference for a document that is  
2 neutral. I would suggest that we scrub this document.

3 I did see some -- there are certain assumptions in  
4 this document that jump at me. For example, if the  
5 President recommends -- if the President's budget  
6 contains X amount, and Congress approves a lesser  
7 amount, there is some language suggesting that that  
8 was a bad thing. I think that we need to establish  
9 benchmarks, or at least discuss why we believe that  
10 Congress was right, the President wrong, or the  
11 President right and Congress wrong.

12 COMMISSIONER BRACERAS: Excuse me. I  
13 mean, I disagree. I don't think we should be saying  
14 who's right or who's wrong at all. I think we should  
15 simply be stating it, and this comes close. I mean, I  
16 have to say this is the most neutral one of these  
17 reports that I've seen since I've gotten here. And I  
18 appreciate that, and commend the Staff for that, but I  
19 don't think with respect to this issue of funding, we  
20 should be in the business of saying who's right and  
21 who's wrong, just simply what was requested and what  
22 was given, period - without any value judgment on  
23 that.

24 CHAIRMAN REYNOLDS: I agree with your  
25 assessment, but the document as written, there are

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1 some areas where a value judgment has been made, at  
2 least in my view. I get a sense that this document is  
3 much better than what's been produced in the past, but  
4 there are still judgments being made as to the  
5 appropriateness of the funding levels. Commissioner  
6 Yaki.

7 COMMISSIONER YAKI: Thank you, Mr. Chair.  
8 I would move that we would move forward to, I guess, a  
9 draft final report incorporating your concerns. I'd  
10 like to see, though, if we could in the draft final,  
11 the changes that were made so that we could just see  
12 what was -- a red line draft. You can tell how much  
13 proofreading I do in my job. But what's it called  
14 again, between this draft and the draft final, but I  
15 think that it is pretty content neutral. And to the  
16 extent that there is any editorial judgment, I think  
17 it should be confined - not confined, but if there  
18 should be a lot of editorial judgment, it should  
19 especially be in the section on our funding.

20 (Laughter)

21 CHAIRMAN REYNOLDS: So we will make an  
22 exception.

23 COMMISSIONER YAKI: That's right.

24 CHAIRMAN REYNOLDS: Well, I agree.

25 COMMISSIONER TAYLOR: Mr. Chair, I have a

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1 question. What is the process for a Commissioner to  
2 provide input on this? Should we submit our own black  
3 line version, if we have some thoughts? How do we  
4 provide input? What level of input is appropriate,  
5 that's my other question.

6 CHAIRMAN REYNOLDS: My suggestion is that  
7 we all just take pen to paper and make our edits on a  
8 paper, and send it to the Staff Director, as opposed  
9 to doing a red line version and having various red  
10 line versions.

11 COMMISSIONER YAKI: And then having the  
12 computer crash.

13 CHAIRMAN REYNOLDS: Yes.

14 COMMISSIONER TAYLOR: Okay.

15 CHAIRMAN REYNOLDS: So mark up the  
16 document, send it to the Staff Director, and the Staff  
17 Director will provide a red line version of this  
18 document.

19 COMMISSIONER BRACERAS: I don't think the  
20 Staff Director has to include everybody's comments. I  
21 think the Staff Director should, in his discretion,  
22 adopt those that he thinks are reasonable, and then  
23 provide the red lined copy to the group for a vote at  
24 the next meeting.

25 VICE CHAIRMAN THERNSTROM: I agree.

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1 CHAIRMAN REYNOLDS: I agree.

2 COMMISSIONER TAYLOR: One other thought I  
3 wanted to raise, to the extent I thought a movement in  
4 terms of a consensus. I wanted to say that I have a  
5 predisposition against expanding this document. I  
6 think this is very close to the type of work we should  
7 do every year, the document we have before us. The  
8 raw data I liked a lot, and in terms of our discussion  
9 at our last meeting relative to larger and major  
10 projects, I would have a preference probably against  
11 expanding this. I think this is some good work we do,  
12 and I think this is the type of work we should  
13 continue to do. So I just wanted to put that on the  
14 table, since I thought a consensus forming.

15 CHAIRMAN REYNOLDS: Okay. All right. So  
16 the Staff Director's office has its marching orders on  
17 this issue.

18 STAFF DIRECTOR MARCUS: Since there was a  
19 consensus to revisit this document during the July  
20 meeting, I suppose there should be thought to at what  
21 date the Commissioners would be providing comments to  
22 us in order that we can turn it around and have it  
23 available in a draft final.

24 VICE CHAIRMAN THERNSTROM: What date do  
25 you need comments by?

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1                   STAFF     DIRECTOR     MARCUS:     Would     the  
2     Commissioners be able to provide comments within a  
3     two-week period?

4                   COMMISSIONER YAKI:    I think that July 1<sup>st</sup>  
5     would probably be the best.

6                   STAFF DIRECTOR MARCUS:   July 1<sup>st</sup> should be  
7     --

8                   COMMISSIONER YAKI:    Then there's the  
9     holiday in-between, and they need to prepare the  
10    agenda.

11                                   **Future Briefings**

12                   CHAIRMAN REYNOLDS:   Okay.   So we have our  
13    deadline.    All right.   Next up, it's a motion  
14    regarding the Sander Article.   There's a motion to  
15    have Staff arrange a briefing before the Commission  
16    concerning the findings of UCLA Professor Richard  
17    Sander in his article entitled, "A Systematic Analysis  
18    of Affirmative Action in American Law Schools".   The  
19    briefing would feature Professor Sander, and at least  
20    one other academic expert on the subject matter of  
21    Professor Sander's article, who can provide a contrary  
22    viewpoint.   Vice Chair Thernstrom.

23                   VICE     CHAIRMAN    THERNSTROM:   Since the  
24    original discussion of this, at least one of the  
25    Commissioners with whom I spoke stated a preference

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1 for having Sander himself. Could it have been you?

2 CHAIRMAN REYNOLDS: Well, finish the  
3 thought.

4 VICE CHAIRMAN THERNSTROM: Sander himself  
5 at a briefing, and then subsequently -- allowing  
6 Sander to have the floor.

7 CHAIRMAN REYNOLDS: Yes, that came from  
8 me.

9 VICE CHAIRMAN THERNSTROM: That came from  
10 you.

11 CHAIRMAN REYNOLDS: Yes.

12 VICE CHAIRMAN THERNSTROM: So why don't  
13 you just --

14 CHAIRMAN REYNOLDS: It's not a strong  
15 preference, at least not at this point. My thought  
16 was to have the presenter make his case, and I would  
17 prefer to hear someone state their views, and state it  
18 in a way that's not anticipating the individuals who  
19 will be following him or her. But looking at the  
20 schedule that we have, I'm not sure that that's  
21 realistic, so I think that let's just forget about my  
22 comment, and we would have Sander and a critic at the  
23 same briefing.

24 VICE CHAIRMAN THERNSTROM: All right.  
25 Well, let me say that I have spoken to Sander about

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1 this briefing. He's very eager to do it, and he's  
2 happy to have somebody who provides a contrary  
3 viewpoint. In fact, he gave me some possible names.  
4 There's been quite a public discussion of this  
5 article.

6 CHAIRMAN REYNOLDS: Commissioner Braceras.

7 COMMISSIONER BRACERAS: Just I guess a  
8 point of order. We're discussing the motion on the  
9 merits of having the Sander briefing first, and then  
10 we will discuss --

11 CHAIRMAN REYNOLDS: The schedule?

12 COMMISSIONER BRACERAS: -- the calendar  
13 for the briefings?

14 CHAIRMAN REYNOLDS: Yes.

15 VICE CHAIRMAN THERNSTROM: Well, let me  
16 say something on that. The calendar for the briefing,  
17 we cannot decide on a date today without consulting  
18 with him.

19 COMMISSIONER BRACERAS: Okay. All right.  
20 So this is --

21 CHAIRMAN REYNOLDS: Is he comfortable with  
22 the month, with April '06? You're just talking about  
23 a date in April of '06, or was it --

24 VICE CHAIRMAN THERNSTROM: Well, I did not  
25 mention to him April '06. He's trying to juggle a

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1 complicated schedule at this point.

2 COMMISSIONER BRACERAS: I think we're just  
3 right now addressing whether or not to do it at all.  
4 And then the calendar question could be revisited at  
5 another time. Is that right?

6 VICE CHAIRMAN THERNSTROM: That's correct.

7 CHAIRMAN REYNOLDS: We'll discuss the  
8 order of the briefings after we finish with this  
9 issue. Commissioner Braceras.

10 COMMISSIONER BRACERAS: I think this is a  
11 great topic. I do think it's important to present an  
12 alternate viewpoint. I would be interested in hearing  
13 the names of the folks that Professor Sander himself  
14 has recommended to the Vice Chair, but of the list in  
15 the briefing materials here, I very much like the idea  
16 of having David Wilkins come to debate him. In  
17 addition to the fact that he was my Civ. Pro.  
18 professor at Harvard, I do think that he is well-  
19 equipped to discuss this issue, as his area of  
20 expertise is the legal profession.

21 VICE CHAIRMAN THERNSTROM: He was Sander's  
22 first recommendation.

23 COMMISSIONER BRACERAS: Great. Great. I  
24 think that's a fabulous choice, and he is a dynamic  
25 speaker, as well. My only other comment would be that

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1 with respect to these briefings, I would love to see  
2 them done in a way that garners a lot of attention  
3 from the public and the press, and the community.

4 CHAIRMAN REYNOLDS: So we'll turn our  
5 Public Affairs unit loose.

6 COMMISSIONER BRACERAS: Yes. Our well-  
7 staffed Public Affairs unit. No, but if there's any  
8 way we can have this debate in a setting other than  
9 this building, I don't know if that's possible, and  
10 make sure that some of the political actors, members  
11 of Congress, people from think tanks and all the like  
12 are invited and aware of the discussion. I think it  
13 could be a very excellent contribution to the debate  
14 on this topic. And this is exactly the type of thing  
15 I'd like to see where we have an even balanced  
16 discussion with different sides represented, so I  
17 endorse the proposal wholeheartedly.

18 CHAIRMAN REYNOLDS: Any other comments?  
19 Okay. Well, I guess I just want to point out that we  
20 do not have a motion.

21 VICE CHAIRMAN THERNSTROM: I was about to  
22 say, I would like to move that the Staff arrange a  
23 briefing with Richard Sander.

24 CHAIRMAN REYNOLDS: Second.

25 COMMISSIONER KIRSANOW: Second.

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1 CHAIRMAN REYNOLDS: And we've already had  
2 discussion. All in favor.

3 (Vote taken.)

4 CHAIRMAN REYNOLDS: Any objections? Okay.  
5 The motion passes.

6 COMMISSIONER BRACERAS: And let's see if  
7 we can try to get David Wilkins.

8 VICE CHAIRMAN THERNSTROM: Yes. And, in  
9 fact, whether --

10 COMMISSIONER YAKI: But Ian Ayres was my  
11 classmate at Yale, so --

12 VICE CHAIRMAN THERNSTROM: Pardon me?

13 COMMISSIONER YAKI: One of the names on  
14 the list, Ian Ayres, was a classmate of mine at Yale.

15 COMMISSIONER BRACERAS: I just think David  
16 Wilkins is particularly well-suited.

17 VICE CHAIRMAN THERNSTROM: Rick Sander's  
18 point to me was that there is -- I can't remember  
19 where it's coming out, but a whole volume of responses  
20 to his original analysis, and that David Wilkins was  
21 the most thoughtful, and that does not translate into  
22 the softest, but really the most thoughtful of all of  
23 them.

24 COMMISSIONER BRACERAS: I would be against  
25 inviting the last individual, the law student, to

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1 debate Professor Sanders.

2 COMMISSIONER KIRSANOW: Just as a  
3 consideration, Lempert was an expert witness for the  
4 defendant in the *Grutter* case. Lempert here is one of  
5 the individuals named. He was an expert witness in  
6 the *Grutter* case, and that might be an interesting  
7 perspective.

8 VICE CHAIRMAN THERNSTROM: Okay. We'll  
9 work this out, but I think the schedule as we make a  
10 date -- well, I think we need to decide who we would  
11 like to have with Sander, and then try to juggle as we  
12 find out what the schedules for both of them are.

13 STAFF DIRECTOR MARCUS: If I may suggest,  
14 in the proposed schedule that's been referred to, the  
15 notion was that a meeting was mentioned as the meeting  
16 on the month, which is the first month of each fiscal  
17 quarter, which is simply based on the notion that we  
18 can do approximately one of these every three months.  
19 One thing we might do is perhaps to agree on a  
20 schedule with the notion that it be -- that each  
21 briefing be held on the fiscal quarter, which is  
22 mentioned in the calendar if that can be arranged.  
23 And if it can't be arranged, to come back to the  
24 Commission. In other words, Staff could go to the  
25 speakers, find out whether they're available under

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1 either say the April meeting or the May meeting --

2 COMMISSIONER YAKI: So it would just be  
3 like "Q" one, "Q" two, "Q" three, and whatever their  
4 ability is, and then we start arranging the dates.

5 STAFF DIRECTOR MARCUS: That's right, but  
6 just to make sure that it's not all compressed.

7 COMMISSIONER YAKI: That makes more sense.

8 STAFF DIRECTOR MARCUS: There's just one  
9 per quarter.

10 COMMISSIONER BRACERAS: Actually, I have  
11 another question - I'm sorry - before we move on. I  
12 meant to ask this before. This is with respect to all  
13 of these proposed briefings. They have a proximate  
14 cost at the bottom, and I'm just not sure how those  
15 numbers were arrived at. They seem a little high to  
16 me if they're just the cost above and beyond staff  
17 time. I don't know if they include an approximation  
18 of staff hours into these projects.

19 STAFF DIRECTOR MARCUS: I believe they are  
20 a combination of approximate travel cost based on a  
21 formula which we could have someone else explain other  
22 than myself.

23 COMMISSIONER BRACERAS: I don't need the  
24 details of the formula.

25 STAFF DIRECTOR MARCUS: Plus some non-

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1 travel costs, including court reporters. Perhaps Mr.  
2 Byrnes could amplify on the cost.

3 MR. BYRNES: The costs include not only  
4 travel costs for both local and out-of-state speakers,  
5 but also transcript fees, Lexis Nexus research fees.  
6 I believe staff hours is also included within these  
7 costs.

8 COMMISSIONER YAKI: We should only invite  
9 people who can pay their own way. We're in a budget  
10 crisis here.

11 COMMISSIONER BRACERAS: It doesn't seem  
12 that useful to me to have the amount here include  
13 staff time, because we're paying the staff whether we  
14 do zero briefings or a hundred briefings.

15 VICE CHAIRMAN THERNSTROM: Right.

16 COMMISSIONER BRACERAS: So we might as  
17 well get as many briefings out of them as we can, is  
18 the way I look at it. So I would just be interested  
19 in knowing what is the out-of-pocket cost above and  
20 beyond what we already have to pay. In other words,  
21 whatever - the Lexis Nexus fees, although I thought  
22 that's a flat fee, isn't it, what we pay Lexis Nexus?

23 MR. BYRNES: We'd back that number out  
24 also.

25 COMMISSIONER BRACERAS: Right. So I would

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1 just -- the court reporting, the travel, and whatever  
2 it costs in terms of xeroxing materials for the press  
3 or advertising it in the limited sense.

4 VICE CHAIRMAN THERNSTROM: Court reporting  
5 is also -- we've got a court reporter at every  
6 meeting.

7 COMMISSIONER BRACERAS: We have a flat  
8 fee?

9 VICE CHAIRMAN THERNSTROM: So that's not  
10 an additional cost.

11 COMMISSIONER BRACERAS: Right. If it's  
12 being done at our monthly meeting and we have a court  
13 reporter anyway - right - that's not an extra cost.

14 STAFF DIRECTOR MARCUS: We would be happy  
15 to back-out the fixed costs and provide out-of-  
16 pockets. I believe for the court reporter, we base it  
17 on the assumption that we would still have a meeting  
18 that day, but that to combine --

19 COMMISSIONER BRACERAS: It takes longer.

20 STAFF DIRECTOR MARCUS: That's right, the  
21 meeting would be longer, so it's a marginal cost of  
22 the court reporter.

23 COMMISSIONER BRACERAS: Okay.

24 STAFF DIRECTOR MARCUS: But we can  
25 certainly provide a separate analysis that just

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1 provides out-of-pocket.

2 COMMISSIONER BRACERAS: Okay. Yes,  
3 because that seems to me the only relevant thing.  
4 Okay. Thanks.

5 COMMISSIONER TAYLOR: Mr. Chair, one  
6 question.

7 CHAIRMAN REYNOLDS: Commissioner Taylor.

8 COMMISSIONER TAYLOR: Historically, have  
9 we done these briefings here or have we done them at a  
10 separate venue?

11 VICE CHAIRMAN THERNSTROM: Here.

12 COMMISSIONER TAYLOR: Here? Well, I would  
13 then try to underscore at this point the earlier  
14 comment, that in my view, at least, we may be able to  
15 generate more publicity if the briefing took place  
16 somewhere other than this location. It's an important  
17 issue, and --

18 CHAIRMAN REYNOLDS: I don't know if I  
19 should be offended or not.

20 COMMISSIONER TAYLOR: I just want the  
21 public to hear this discussion. That's my concern.

22 COMMISSIONER BRACERAS: Yes. And I'm not  
23 proposing incurring any additional costs necessarily,  
24 but there may be creative ways we can work with other  
25 branches of government or groups to use a room that

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1 doesn't cost too much money.

2 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

3 COMMISSIONER KIRSANOW: This is an  
4 observation. We had discussed in the past the  
5 possibility of using the room up on the Hill. I think  
6 that suggestion was received favorably by folks on the  
7 Hill, and this would also enable folks from Congress  
8 to show up if they wish to do so, or at least expedite  
9 that process.

10 CHAIRMAN REYNOLDS: Okay. I agree.

11 VICE CHAIRMAN THERNSTROM: I just wanted  
12 to say something on this. I was also going to remind  
13 us of that fact, and it applies, obviously, to more  
14 than the Sander briefing. We've got important  
15 briefings, a list of potentially important briefings  
16 here. In general, if it's possible, it would be  
17 better to have them on the Hill. Any disagreement  
18 with that? You're looking at me.

19 COMMISSIONER YAKI: No, I absolutely  
20 agree.

21 STAFF DIRECTOR MARCUS: I would suggest,  
22 though, that if the Commissioners do want to have a  
23 meeting as soon as July, the only location that we  
24 could probably have it is here. And that if the  
25 Commissioners wanted a location other than here, it

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1 would probably have to be later than July.

2 VICE CHAIRMAN THERNSTROM: Too late to  
3 move that.

4 STAFF DIRECTOR MARCUS: Well, I certainly  
5 can't assure that we would. I mean, it's just one  
6 month, so I don't know what --

7 COMMISSIONER YAKI: It should be the July  
8 recess by then.

9 CHAIRMAN REYNOLDS: Okay. Why don't we  
10 look into it to see if we can pull it off for the  
11 first briefing.

12 VICE CHAIRMAN THERNSTROM: I mean, that is  
13 an extremely important briefing. It's shaping up to  
14 be a very interesting briefing. It should have --  
15 there should be wide interest in it. It is a briefing  
16 by people across the political spectrum, and I would  
17 really like to see it on the Hill.

18 CHAIRMAN REYNOLDS: On a related note, I  
19 think that we should come up with a battle plan in  
20 terms of public relations. I think that if we're  
21 going to conduct these briefings and discuss these  
22 important issues, that it's important that we entice  
23 the public and the press to attend our meetings, so I  
24 understand that we're laboring with -- well, we're  
25 short of hands in terms of folks with expertise in

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1 public relations, but we'll have to call upon Ms.  
2 Dickerson and her band of warriors to come up with a  
3 plan.

4 COMMISSIONER BRACERAS: If I could be so  
5 bold, I'd like to also volunteer Kim Schuld's services  
6 in that regard. I know Kim can be very helpful with  
7 media relations, and given the office is short-  
8 staffed.

9 STAFF DIRECTOR MARCUS: That would be very  
10 helpful.

11 CHAIRMAN REYNOLDS: Okay. Commissioner  
12 Yaki, did I see your hand raised?

13 COMMISSIONER YAKI: I was just going to  
14 say that one of the things to do is if we approve the  
15 list, that we can create short synopses of all these  
16 and put a little flash or headline on the website to  
17 help get that out there, too.

18 STAFF DIRECTOR MARCUS: Is there a  
19 consensus that we can put that on the website without  
20 any further vote by the Commission?

21 VICE CHAIRMAN THERNSTROM: Yes.

22 COMMISSIONER BRACERAS: Yes.

23 CHAIRMAN REYNOLDS: Okay. Any other items  
24 to discuss at least with respect to this issue? All  
25 right. Next up will be the schedule for the

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1 briefings. I don't know if you have the months in  
2 front of you, but the first would be a briefing --

3 COMMISSIONER YAKI: Did we do the Besharov  
4 motion yet?

5 CHAIRMAN REYNOLDS: I was under the  
6 impression that that was handled after I left at the  
7 last meeting, but am I wrong?

8 COMMISSIONER YAKI: It's the Vice Chair --  
9 (Laughter.)

10 CHAIRMAN REYNOLDS: Was there a vote?

11 VICE CHAIRMAN THERNSTROM: Was there a  
12 vote?

13 CHAIRMAN REYNOLDS: I mean, you're talking  
14 as if this is a done deal.

15 COMMISSIONER YAKI: We agreed on it. I  
16 just don't remember that we said July, but if that's  
17 the case, then --

18 VICE CHAIRMAN THERNSTROM: I think that at  
19 some point we did, but I could be mistaken.

20 CHAIRMAN REYNOLDS: Well, are there any  
21 objections to -- oh, it's in the Minutes?

22 VICE CHAIRMAN THERNSTROM: It's in the  
23 Minutes.

24 CHAIRMAN REYNOLDS: Is it?

25 VICE CHAIRMAN THERNSTROM: Okay.

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1 CHAIRMAN REYNOLDS: So it will be July.

2 VICE CHAIRMAN THERNSTROM: And is it  
3 understood that we are going to try to find, even  
4 though it's on short notice, a location, a better  
5 location for that?

6 CHAIRMAN REYNOLDS: Okay.

7 COMMISSIONER YAKI: So it's an amended  
8 schedule with the first one being the African American  
9 Stagnation class issue for July. Okay.

10 CHAIRMAN REYNOLDS: Okay. So that would -  
11 - I'm sorry. Commissioner Braceras.

12 COMMISSIONER BRACERAS: I'm sorry. So  
13 these other briefing topics, do we need to vote to do  
14 them before we vote on the schedule?

15 CHAIRMAN REYNOLDS: Didn't we already vote  
16 on these?

17 COMMISSIONER YAKI: We voted to do these.

18 VICE CHAIRMAN THERNSTROM: We voted to do  
19 these.

20 COMMISSIONER BRACERAS: That's what I  
21 thought. Okay. But we hadn't voted on Sander, we had  
22 only voted on --

23 CHAIRMAN REYNOLDS: No, no. Sander just  
24 came up this month.

25 COMMISSIONER BRACERAS: Okay.

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1 CHAIRMAN REYNOLDS: Okay. So right now  
2 the only thing we're voting on is the schedule for  
3 briefings that have previously been approved.

4 COMMISSIONER BRACERAS: That's right.

5 COMMISSIONER YAKI: And per the Staff  
6 Director's recommendation, I would amend the dates to  
7 simply say for the Patriot Act, that would be third  
8 quarter. Right?

9 STAFF DIRECTOR MARCUS: Fourth quarter.

10 COMMISSIONER YAKI: Third or fourth  
11 quarter.

12 STAFF DIRECTOR MARCUS: It's the fourth  
13 quarter of '05.

14 COMMISSIONER YAKI: '05, and then for each  
15 of the other ones it would be key one - '06; "Q" two -  
16 '06; "Q" three - '06; "Q" four - '06, et cetera.

17 CHAIRMAN REYNOLDS: Okay. I'm sorry. I  
18 didn't follow that. It's which quarter, the Patriot  
19 Act?

20 STAFF DIRECTOR MARCUS: The Patriot Act  
21 would be fourth quarter '05.

22 CHAIRMAN REYNOLDS: Okay.

23 STAFF DIRECTOR MARCUS: But at the very  
24 end of it, as opposed to the very beginning of it. So  
25 we would not have one during the first quarter of '06.

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1 Campus Anti-Semitism would be the first quarter '06,  
2 Affirmative Action in Law Schools would be second  
3 quarter '06, Voting Rights in the U.S. Territories  
4 would be third quarter '06, Voter Fraud and Voter  
5 Intimidation would be --

6 CHAIRMAN REYNOLDS: Fourth quarter '06.

7 STAFF DIRECTOR MARCUS: We could say  
8 fourth quarter '06.

9 COMMISSIONER BRACERAS: May I ask a  
10 question?

11 CHAIRMAN REYNOLDS: Yes.

12 COMMISSIONER BRACERAS: I understand that  
13 we voted to do these topics. I guess what I wasn't  
14 clear on is whether we voted on the scope of the  
15 briefing as represented in these materials.

16 CHAIRMAN REYNOLDS: Where is our  
17 institutional memories? Does anyone remember?

18 STAFF DIRECTOR MARCUS: These materials  
19 are new.

20 COMMISSIONER BRACERAS: Right.

21 STAFF DIRECTOR MARCUS: The summaries of  
22 the topic represent a more abbreviated version of the  
23 concept papers that the Commissioners had before them  
24 at the time they voted during the last meeting.

25 COMMISSIONER BRACERAS: Okay. Just

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1 because I had some comments on a couple of them in  
2 terms of the scope, and I don't know what the  
3 appropriate time is to raise those.

4 CHAIRMAN REYNOLDS: Okay. Let's see if we  
5 can handle your concerns now.

6 COMMISSIONER BRACERAS: Okay. The first  
7 one is with number one, because it seems to me that  
8 Patriot Act is separate, although possibly overlapping  
9 with Anti-Arab and Anti-Muslim Intolerance as listed  
10 on the schedule here. And so my concern is just that  
11 we don't have a topic that's too broad and too  
12 unmanageable.

13 CHAIRMAN REYNOLDS: There are two concepts  
14 there, and at some points they do relate, possibly,  
15 arguably. One, I suppose, would be a critique of the  
16 Patriot Act, and the second piece, just getting an  
17 update on what's going on in Arab communities.

18 COMMISSIONER BRACERAS: Personally, I  
19 think that's too broad, and my concern is that in the  
20 past when we've had these briefings, we've had  
21 speakers address so many different angles and so many  
22 different aspects of a large topic that the briefing  
23 didn't gel in the sense that we had a coherent  
24 discussion of a discreet topic between opposing sides,  
25 which I think is exactly what we've agreed to do with

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1 the Sander briefing, and why it will be so useful to  
2 policymakers. So I would just like to see this  
3 narrowed down to the point that we can have a discreet  
4 discussion on something, perhaps the provisions that  
5 are up of the Patriot Act so that we don't have our  
6 speakers going off on tangents. We want this to be as  
7 focused and as useful as possible.

8 CHAIRMAN REYNOLDS: Commissioner Yaki.

9 COMMISSIONER YAKI: Yes. Thank you very  
10 much, Mr. Chair. As the person who proposed this, I  
11 actually -- I understand Commissioner Bracer's  
12 comments, and actually I was very careful not to go  
13 into a complete and total discussion of the Patriot  
14 Act as a result. I simply wanted to focus on those  
15 provisions dealing with -- that have been cited by, or  
16 referenced by either the FBI, or by the Arab and  
17 Muslim communities in terms of potential -- well,  
18 actions that have resulted in potential Civil Rights  
19 issues being brought forward. And the importance of  
20 this I think is underscored by the events going on in  
21 my home state in Lodi. As you know, they arrested  
22 several people, one of whom is alleged to have gone to  
23 an Al Qaeda training camp, and certainly I'm not going  
24 to pass judgment on the guilt or innocence of anyone  
25 there, but certainly we want the U.S. Government to

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1 find those people who would be terrorists in our  
2 country. But at the same time, there are substantial  
3 questions being raised in the conduct. And subsequent  
4 to those arrests, with the Muslim community in Lodi,  
5 that are clearly -- where references have been made by  
6 FBI agents, that they are acting pursuant to the  
7 Patriot Act, and where American Muslims feel that they  
8 are being harassed, intimidated, et cetera. So I  
9 understand, Commissioner Braceras, we don't want to  
10 get into this whole thing about the Patriot Act, and  
11 the Warner Act, and all this other kind of stuff. And  
12 I think that I would be amenable to trying to narrow  
13 it down as much as possible, but I do believe that  
14 there are sections and provisions of the Patriot Act  
15 that are being implicated and are being used by law  
16 enforcement right now that to the American Muslim and  
17 the American Arab community are being used in a way  
18 that they believe may infringe upon their Civil Rights  
19 and Civil Liberties.

20 COMMISSIONER BRACERAS: So, I mean, I  
21 think then just to be clear to the Staff, the topic is  
22 not really the Patriot Act and Anti-Arab and Muslim  
23 Intolerance.

24 COMMISSIONER YAKI: As it relates to.

25 COMMISSIONER BRACERAS: As it relates to.

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1 COMMISSIONER YAKI: Yes.

2 COMMISSIONER BRACERAS: And I'm not sure,  
3 maybe the Staff can tell us, or you have some ideas,  
4 Commissioner Yaki, of specific speakers we're  
5 considering. But that might help in terms of my  
6 understanding of this topic, because we had some ACLU  
7 folks come in to talk about the Patriot Act,  
8 generally, before.

9 COMMISSIONER YAKI: Right.

10 COMMISSIONER BRACERAS: And I just don't  
11 want to repeat that same discussion.

12 COMMISSIONER YAKI: No, this would not be  
13 that. This would go to real life experiences and what  
14 people are doing. I'm in contact with the community  
15 in Lodi. I think some of them might be interested in  
16 giving some of the latest experiences of what's been  
17 going on there, and again, I'd be more than willing to  
18 work with the Staff to make sure that this doesn't  
19 become a general indictment of Patriot good/Patriot  
20 bad, that kind of thing.

21 CHAIRMAN REYNOLDS: So you don't want an  
22 academic debate over the merits of the Patriot Act.

23 COMMISSIONER BRACERAS: No.

24 CHAIRMAN REYNOLDS: Okay.

25 COMMISSIONER BRACERAS: But I also become

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1 concerned when the Commissioners are used as an open  
2 forum for people's Gestalt impressions of  
3 discrimination, and urban legends, and stories and  
4 rumors, and innuendo. And so I'd like to see somebody  
5 speak to the very important issues Commissioner Yaki  
6 raises, who has data or actual experiences to support  
7 those claims, and not just general rumblings in the  
8 community.

9 CHAIRMAN REYNOLDS: I understand. Vice  
10 Chair.

11 VICE CHAIRMAN THERNSTROM: I wonder if it  
12 would be useful, not only with respect to this  
13 question; that is, the Patriot Act and Anti-Arab/Anti-  
14 Muslim Intolerance, but in general, to pose a concrete  
15 question that is attached to each one of them. That  
16 is, in the case of the Patriot Act, Commissioner Yaki,  
17 you would say what is or what are blah, blah, blah.  
18 And that would define the topic in a manageable way.  
19 You would be posing the question that would set the  
20 limits and I think in general, that would be useful.  
21 What is the central question we're getting at?

22 COMMISSIONER YAKI: What's interesting is  
23 that we're basically undergoing the Braceras Rules for  
24 this, because we had talked about how we wanted to do  
25 exactly this kind of discussion as we got down toward

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1 the briefing. Now we haven't really quite done it for  
2 the one in July. I don't think we have enough time to  
3 do that, but I'd be more than willing, given that this  
4 is a Q-four thing, to come back in July as a proponent  
5 of this with some specific questions that I can work  
6 out with Staff, that would sort of be the things that  
7 people would come prepared to testify and to talk  
8 about. And so a Department representative who would  
9 be here, whether from DOJ or Homeland Security,  
10 whatever, would be willing to do that. But I think  
11 this is perfectly consistent with the rules that we  
12 talked about, and maybe this is the test case about  
13 how we go about doing it. This discussion is very  
14 helpful, and I would propose that we adopt a schedule,  
15 but I will come back in July with Staff with specifics  
16 about what will be the focus of the questions and the  
17 topics to be asked.

18 COMMISSIONER BRACERAS: And I do think  
19 that with the Sander briefing, that the nature of the  
20 briefing actually poses the question already, because  
21 his paper is out there.

22 COMMISSIONER YAKI: Sure.

23 VICE CHAIRMAN THERNSTROM: Right.

24 COMMISSIONER BRACERAS: And he's going to  
25 be presenting and commenting on his own work; and,

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1       therefore, we know basically what he's going to say,  
2       and the person who's invited to critique that has that  
3       information, so we're all kind of on the same page of  
4       what the question is that the speakers are being asked  
5       to address.

6                   VICE CHAIRMAN THERNSTROM:   That's true,  
7       but it is not true --

8                   COMMISSIONER BRACERAS:   It is not true of  
9       the others.

10                  VICE CHAIRMAN THERNSTROM:   -- of any of  
11       the remaining ones.   And I think with respect to all  
12       of them, we need to pose what the central question or  
13       questions are, so that we do not have, as Commissioner  
14       Braceras has described, these all over the map  
15       presentations.

16                  COMMISSIONER BRACERAS:   Right.   And then I  
17       was just going to raise a similar concern about the  
18       scope of the Religious Discrimination in the Workplace  
19       topic, although I'm just trying to find that page.  
20       There it is.   This seems to be limited to discussions  
21       of religious discrimination towards Muslims, and I'm  
22       not sure whether it should be so limited.   I know  
23       there have been -- I'm not sure that it shouldn't be  
24       expanded to include Anti-Catholicism and Anti-  
25       Christian bias in the workplace.   I don't want to make

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1 it too broad, because I don't want to run into the  
2 concern of having an all over the place briefing, but  
3 I wasn't sure why the scope had been narrowed to the  
4 Muslim religion in this particular case.

5 STAFF DIRECTOR MARCUS: If I may, the  
6 intent wasn't to limit it simply to that issue, but  
7 rather to include a discussion of potential increase  
8 in discrimination in that area in the context of a  
9 broader discussion of religious discrimination in the  
10 workplace. That was the intent of the concept paper  
11 that's before you. We could certainly delete that  
12 portion so that it's simply generally a discussion of  
13 the religious discrimination in the workplace issues  
14 that are described under scope.

15 COMMISSIONER BRACERAS: I would like to  
16 see it more general to include discrimination against  
17 Jews and Christians in the workplace, as well. But  
18 also, there is this whole issue on the flip-side of  
19 this debate of what counts as a religion. And, Ken, I  
20 think you and I did discuss this at one point, that I  
21 think as every employment lawyer knows, there are  
22 constantly people inventing new religions to get  
23 accommodations in the workplace. And the case that  
24 always come to my mind is the case, I think from  
25 Springfield, Massachusetts, where the employer

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1 established a policy against body piercing, and the  
2 employee came back and said actually, that was part of  
3 her religious beliefs because she was a member of a  
4 body piercing cult. And the EEOC, I guess at least in  
5 the initial stages, agreed with that employee, so  
6 there is the whole issue of what counts as a religion  
7 that requires accommodation. And that may be too much  
8 to fold into this, but I certainly don't want to see  
9 this issue limited to one particular religion. I'd  
10 like it to look at discrimination against all faiths  
11 in the workplace, and perhaps we want to consider the  
12 flip-side of this question, as well.

13 CHAIRMAN REYNOLDS: Unless there are any  
14 objections, I think that we should direct the Staff  
15 Director to expand the scope in that it will not focus  
16 primarily on Muslims.

17 VICE CHAIRMAN THERNSTROM: Well, I don't  
18 see why that we can't also have one sentence that  
19 defines religion for these purposes.

20 (Simultaneous speech.)

21 COMMISSIONER BRACERAS: What I'd like to  
22 see is --

23 VICE CHAIRMAN THERNSTROM: It's not a  
24 legal -- we're defining for our own purposes.

25 COMMISSIONER BRACERAS: I mean, I think as

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1 this proposal says in the methodology in terms of the  
2 types of speakers that would be invited, what would be  
3 interesting to me is to hear from someone, for  
4 example, from the EEOC about the numbers and types of  
5 complaints that they are receiving, and the types of  
6 accommodations that are being provided, or the  
7 resistance to providing accommodations that the EEOC  
8 might be encountering. That would be something that  
9 would be useful and interesting, I think.

10 VICE CHAIRMAN THERNSTROM: Yes.

11 COMMISSIONER YAKI: But this is more than  
12 an accommodation test. I think what some of the --  
13 what this seems to indicate is that it's more than  
14 accommodation that's going on. It's harassment and  
15 other types of issues on the basis of faith, or  
16 perceived faith, on the basis of the American Muslim  
17 population. I think that we can make it more generic,  
18 but I don't think we should go into the area of  
19 defining what a religion is.

20 VICE CHAIRMAN THERNSTROM: I withdraw  
21 that.

22 COMMISSIONER BRACERAS: I'm not sure we  
23 should be defining it, but I'd be interested to hear  
24 from the EEOC statistics on the types of complaints  
25 they're receiving, and how many of them are from

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1 traditional major religions, and how many of them are  
2 from --

3 COMMISSIONER YAKI: The Church of Satan or  
4 something like that.

5 COMMISSIONER BRACERAS: The Church of  
6 Satan - right.

7 CHAIRMAN REYNOLDS: Okay. Commissioner  
8 Braceras, do you have any other comments with respect  
9 to the remaining briefings?

10 COMMISSIONER BRACERAS: No, although I  
11 assume we're going to be kept informed as these are  
12 planned as to speakers, and we'll have opportunities  
13 to suggest perhaps speakers, or the precise questions  
14 to be addressed to the speakers.

15 CHAIRMAN REYNOLDS: Those are in your  
16 rules, those are in the Braceras Rules.

17 COMMISSIONER BRACERAS: Okay.

18 CHAIRMAN REYNOLDS: Okay. At this point,  
19 I believe we need a vote to vote on the actual  
20 schedule.

21 COMMISSIONER YAKI: Move as amended by the  
22 Staff Director.

23 COMMISSIONER TAYLOR: Second.

24 CHAIRMAN REYNOLDS: Okay. We've had the  
25 discussion. All in favor.

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(Vote taken.)

**Website Management**

CHAIRMAN REYNOLDS: All in opposition.

The motion passes. Okay. Website Management is up next. There is a motion that the Commission authorize the removal of Commissioners' Thernstrom and Redenbaugh's dissent in the report on voting irregularities in Florida during the 2000 Presidential Election from the Commission's website, and that the dissent be placed with the following statement.

"Anyone who is interested in obtaining the July 19<sup>th</sup>" -

-

VICE CHAIRMAN THERNSTROM: No, there's something wrong with this.

CHAIRMAN REYNOLDS: Yes. Yes.

VICE CHAIRMAN THERNSTROM: It's not a statement. It is the dissent itself.

CHAIRMAN REYNOLDS: Okay.

VICE CHAIRMAN THERNSTROM: The dissent itself was not what was up on the website.

CHAIRMAN REYNOLDS: Right. So what's up there, is it a synopsis or --

VICE CHAIRMAN THERNSTROM: No, it was a first draft, which is full of subsequently corrected errors.

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1 CHAIRMAN REYNOLDS: Okay. I got it now.  
2 Okay. So the language would read, "Anyone who is  
3 interested in obtaining the draft of the July 19<sup>th</sup>,  
4 2001 dissenting statement of Abigail Thernstrom and  
5 Russell G. Redenbaugh from the voting irregularities  
6 in Florida during the 2000 Presidential Election  
7 report can find it on" --

8 VICE CHAIRMAN THERNSTROM: No. The actual  
9 dissent. It is the actual dissent that can be found.  
10 What is now on the website is simply what was  
11 submitted to Senate hearings, and was a very early  
12 draft.

13 COMMISSIONER BRACERAS: Why wouldn't we  
14 post the final dissent on our website?

15 VICE CHAIRMAN THERNSTROM: Because there  
16 have been legal questions, the old legal questions  
17 raised about the fact that it was uncompensated work  
18 by Steven Thernstrom and John Lott that contributed to  
19 the dissent.

20 CHAIRMAN REYNOLDS: Right. And so we will  
21 just --

22 VICE CHAIRMAN THERNSTROM: If you  
23 remember, the --

24 COMMISSIONER BRACERAS: Yes, I do  
25 remember.

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1 VICE CHAIRMAN THERNSTROM: If you  
2 remember, Christopher Edley said that problem could be  
3 easily solved by paying each of them a dollar. And  
4 that remains, it seems to me, an alternative, but  
5 without getting into that whole legal question, people  
6 who want to see it can simply go to my website.

7 COMMISSIONER BRACERAS: Okay.

8 VICE CHAIRMAN THERNSTROM: Our website, I  
9 should say.

10 CHAIRMAN REYNOLDS: Okay. We've had the  
11 discussion.

12 VICE CHAIRMAN THERNSTROM: Yes, but it's  
13 got to read properly here.

14 CHAIRMAN REYNOLDS: Okay.

15 VICE CHAIRMAN THERNSTROM: I move that the  
16 Commission authorize the removal of Commissioner  
17 Thernstrom and Redenbaugh's draft dissent, and anyone  
18 interested in obtaining the final dissent, the dissent  
19 in its final form can find it on www.

20 CHAIRMAN REYNOLDS: Okay. Before we vote,  
21 let's take a 15 minute recess.

22 VICE CHAIRMAN THERNSTROM: That's fine.

23 (Whereupon, the proceedings in the above-  
24 entitled matter went off the record at 11:31:22 a.m.  
25 and went back on the record at 11:49:32 a.m.)

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1 CHAIRMAN REYNOLDS: Okay. Let me read the  
2 revised motion into the record. This is a motion to  
3 remove certain documents from the Commission's  
4 website. I move that the Commission authorize the  
5 removal of Commissioners Thernstrom and Redenbaugh's  
6 draft dissent in the report on Voting Irregularities  
7 in Florida during the 2000 Presidential Election from  
8 the Commission's website, and that the dissent be  
9 replaced with the following statement. "Anyone who is  
10 interested in obtaining the July final statement of  
11 Abigail Thernstrom and Russell G. Redenbaugh from the  
12 Voting Irregularities in Florida during the 2000  
13 Presidential Election report, which is not an official  
14 document of the Commission, can find it on  
15 [www.thernstrom.com](http://www.thernstrom.com)."

16 VICE CHAIRMAN THERNSTROM: Otherwise known  
17 as [www.thernstrom.com](http://www.thernstrom.com).

18 CHAIRMAN REYNOLDS: Okay. That is the  
19 motion.

20 VICE CHAIRMAN THERNSTROM: Second it.

21 CHAIRMAN REYNOLDS: Okay. Seconded.

22 COMMISSIONER KIRSANOW: So we're  
23 advertising the particular website or something?

24 CHAIRMAN REYNOLDS: I'll just take that as  
25 a joke. In any event, any additional conversation,

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1 discussion? All in favor.

2 (Vote taken.)

3 CHAIRMAN REYNOLDS: Any objections? Okay.

4 The motion passes. Okay. On a related matter, and  
5 I'm fearful that this is going to cause problems - the  
6 second motion relating to the website is that what we  
7 agreed - I move that the Commission authorize the  
8 removal of Appendix 9 of the Voting Irregularities in  
9 Florida during the 2000 Presidential Election report  
10 from the Commission's website, and that Appendix 9 be  
11 replaced with the following statement. "Anyone who is  
12 interested in obtaining the statement of Commissioner  
13 Abigail Thernstrom and Russell G. Redenbaugh, as well  
14 as the report by Dr. John Lott to the U.S. Senate  
15 Committee on Rules and Administration which is not an  
16 official document of the Commission, can find it on  
17 [www.thernstrom.com](http://www.thernstrom.com)." Second?

18 VICE CHAIRMAN THERNSTROM: Wait a minute.

19 I haven't looked at this since those days, but is  
20 there a separate report by John Lott?

21 COMMISSIONER KIRSANOW: Isn't that that  
22 statistical information that --

23 VICE CHAIRMAN THERNSTROM: Does it have  
24 his name on it?

25 COMMISSIONER KIRSANOW: I believe so.

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1 Yes.

2 VICE CHAIRMAN THERNSTROM: It's been a  
3 long time since I've looked at this.

4 CHAIRMAN REYNOLDS: Mr. Jaffe.

5 MR. JAFFE: There are two documents on the  
6 website. One is the draft dissent, and then in  
7 Appendix 9 is that draft dissent again, in addition to  
8 a second document that is listed under Dr. Lott's  
9 name. But they're in two separate places on the  
10 website, and if they're both to be removed, they have  
11 to be removed by separate motions, or at least they'd  
12 have to be pointed to in the motions.

13 CHAIRMAN REYNOLDS: Okay. Is there a  
14 second?

15 COMMISSIONER TAYLOR: Second.

16 CHAIRMAN REYNOLDS: Thank you.  
17 Discussion. All in favor.

18 (Vote taken.)

19 CHAIRMAN REYNOLDS: Any objections? The  
20 motion passes. Okay. The next motion up - I move  
21 that the letter sent by the Staff Director to the  
22 Department of Justice on May 19<sup>th</sup>, 2005 on behalf of a  
23 unanimous Commission urging the Department to  
24 investigate alleged racist incidents in Spring Valley,  
25 Nevada be posted to the Commission website at the

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1 earliest practicable time. Is there a second?

2 COMMISSIONER TAYLOR: Second.

3 CHAIRMAN REYNOLDS: Discussion? All in  
4 favor say aye.

5 (Vote taken.)

6 **Future Agenda Items**

7 CHAIRMAN REYNOLDS: Any objections? The  
8 motion passes. Okay. Future agenda items. During  
9 the May Commission meeting, the Commission voted to  
10 join other employers by citing a statement of support  
11 for the National Guard and Reserve, pledging that  
12 among other things, that employment and career  
13 opportunities at the Commission will not be limited or  
14 reduced because of service in the Guard or Reserve.  
15 The Commission has since signed onto that pledge, and  
16 during the July Commission meeting, in a brief  
17 presentation ceremony, representatives from the  
18 National Guard and Reserve have offered to present the  
19 Commission with a plaque expressing its gratitude.  
20 Are there any objections to having this presentation -  
21 - I'm sorry. May I have a second?

22 VICE CHAIRMAN THERNSTROM: Second.

23 CHAIRMAN REYNOLDS: Are there any  
24 discussions to having this brief presentation at the  
25 next meeting? I want to point out, though, that the

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1 next meeting will be, I suspect, a full meeting. We  
2 will take care of some of the usual Commission  
3 business, and in addition to that, we will have our  
4 first briefing, so I just put that on the table.

5 STAFF DIRECTOR MARCUS: One other thing  
6 I'll add is that the National Guard has indicated that  
7 if they are going to have the ceremony, they will make  
8 efforts to contact various media outlets about having  
9 the whole thing carried on cable.

10 CHAIRMAN REYNOLDS: Okay.

11 COMMISSIONER BRACERAS: I would defer to  
12 the Staff Director on this question. If you think  
13 it's a good idea, I'm willing to support it. If you  
14 think it's too complicated --

15 STAFF DIRECTOR MARCUS: No, I agree with  
16 the Chairman. I don't think it's too complicated. I  
17 think it can be brief. It's a nice thing to do, and a  
18 nice statement, and it can bring more public attention  
19 both to the National Guard, and to the July meeting of  
20 the Commission.

21 VICE CHAIRMAN THERNSTROM: And I hope we  
22 will underscore the word "brief" in our communications  
23 with them.

24 CHAIRMAN REYNOLDS: Just tell them they  
25 have six minutes and be done with it.

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1 COMMISSIONER YAKI: Unless they bring the  
2 band.

3 CHAIRMAN REYNOLDS: Okay. So all in  
4 favor.

5 (Vote taken.)

6 CHAIRMAN REYNOLDS: Any objections? The  
7 motion passes. Okay. Unless I have missed something,  
8 I believe we're done, and may I have a motion to  
9 adjourn the meeting.

10 VICE CHAIRMAN THERNSTROM: So moved.

11 CHAIRMAN REYNOLDS: Any objections? Okay.  
12 We're done.

13 (Whereupon, the proceedings in the above-  
14 entitled matter went off the record at 11:56 a.m.)  
15  
16  
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21

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